S. HRG. 99-244

IRS REGULATIONS RELATING TO KEEPING DETAILED AUTOMOBILE LOGS

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

SPECIAL HEARING

Department of the Treasury

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE

53-391 O WASHINGTON : 1985

5181-51

COMMITTEE ON APPROPRIATIONS

MARK O. HATFIELD, Oregon, *Chairman*

TED STEVENS, Alaska
LOWELL P. WEICKER, JR., Connecticut
JAMES A. McCLURE, Idaho
PAUL LAXALT, Nevada
JAKE GARN, Utah
THAD COCHRAN, Mississippi
MARK ANDREWS, North Dakota
JAMES ABDNOR, South Dakota
ROBERT W. KASTEN, JR., Wisconsin
ALFONSE M. D'AMATO, New York
MACK MATTINGLY, Georgia
WARREN RUDMAN, New Hampshire
ARLEN SPECTER, Pennsylvania
PETE V. DOMENICI, New Mexico

JOHN C. STENNIS, Mississippi
ROBERT C. BYRD, West Virginia
WILLIAM PROXMIRE, Wisconsin
DANIEL K. INOUYE, Hawaii
ERNEST F. HOLLINGS, South Carolina
LAWTON CHILES, Florida
J. BENNETT JOHNSTON, Louisiana
QUENTIN N. BURDICK, North Dakota
PATRICK J. LEAHY, Vermont
JIM SASSER, Tennessee
DENNIS DECONCINI, Arizona
DALE BUMPERS, Arkansas
FRANK R. LAUTENBERG, New Jersey
TOM HARKIN, Iowa

J. KEITH KENNEDY, *Staff Director and Clerk*
REBECCA M. DAVIES, *Deputy Staff Director*
FRANCIS J. SULLIVAN, *Minority Staff Director*

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT

JAMES ABDNOR, South Dakota, *Chairman*

PAUL LAXALT, Nevada
MACK MATTINGLY, Georgia
MARK O. HATFIELD, Oregon
(EX OFFICIO)

DENNIS DECONCINI, Arizona
WILLIAM PROXMIRE, Wisconsin

Professional Staff
CHUCK PARKINSON
ROBERT E. MILLS *(Minority)*

CONTENTS

CONGRESSIONAL WITNESS

Page

Statement of Hon. John heinz, U.S. Senator from Pennsylvania 4
Prepared statement 8

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

Statement of Hon. Roscoe Egger, Commissioner 15
Prepared statement 21
Additional committee questions 42

NONDEPARTMENTAL WITNESSES

Statements of:
Barbara S. Bromberg, Esq., Paxton & Seasongood, Cincinnati, OH, on behalf of numerous clients in the nonprofit and for-profit sector 51, 53, 62
James J. Gibbons, president, Manufacturers' Agents National Association, Laguna Hills, CA 51, 53, 63
James D. McCarthy, Esq., taxation committee, small business subcommittee, Chamber of Commerce of the United States, Washington, DC 51, 64, 66
John W. Hazard, Jr., Esq., Webster, Chamberlain & Bean, Washington, DC, on behalf of the National Association of Accountants 51, 53, 72
Walter E. Huizenga, Esq., chief counsel, National Automobile Dealers Association, McLean, VA 51, 53, 74, 76
Paul J. Coughlin, Jr., Esq., president, Maryland Association of Manufacturers, Baltimore, MD 51, 53, 81
Robert Stork, CPA, Dupuis & Ryden, Flint, MI 51, 53, 82
Grace Ellen Rice, assistant director, national affairs division, American Farm Bureau Federation 86
Nicholas E. Calio, vice president, Government relations, National Association of Wholesaler-Distributors 86, 101, 103
John Motley, director of Federal legislation, National Federation of Independent Business 86, 88, 89
Frank Brost, attorney, Brost & Brost, Presho, SD 86, 99, 100

ADDITIONAL SUBMITTED STATEMENTS AND LETTERS

Letter from Lee G. Karl, president, Sheet Metal and Air Conditioning Contractors' National Association, Inc 117
Prepared statement 118
Statement of the National Council of Farmer Cooperatives 127
Statement of the Texas Cattle Feeders Association 128
Statement of the National Retail Merchants Association 130
Statement of the National Soft Drink Association 136
Statement of the Interstate Carriers Conference 141
Statement of the Edison Electric Institute 143

Page
Letter from John W. Nerlinger, president, Automotive Service Industry Association 146
Statement of the Independent Automotive Service Association 147
Statement of the National Cable Television Association 148
Letter from Ronald A. Pearlman, Assistant Secretary (Tax Policy), Department of the Treasury 150
Letter from Dennis R. Wraase, comptroller, the Potomac Electric Power Co 151
Statement of the Potomac Electric Power Co 151
Letter from B.A. Wharton, secretary, Iowa Public Service Co 152
Statement of the Iowa Public Service Co 153
Statement of Wallace F. Tillman, senior regulatory counsel, National Rural Electric Cooperative Association 155
Statement of the Associated Specialty Contractors, Inc 159
Letter from Thomas W. Welling, Welling Contact Lens Service 170
Letter from Joan Insley 171
Letter from Edward L. Vogel, president, Vogel Disposal Service, Inc 171
Letter from Robert Purse, Muetzel & Purse Florist 172
Letter from Peter J. Stahl, Newhard Pharmacy 172
Letter from R.J. Hutton, president, the Conard-Pyle Co 173
Letter from David P. Walsh, vice president, Dauphin Consolidated Water Supply Co 174
Statement of the American Rental Association 175
Statement of the National Cattlemen's Association 176
Statement of the American Public Power Association 177
Limitation on amount of depreciation and investment tax credit for luxury automobiles; limitation when certain property is used for personal purposes; Notice of proposed rulemaking 185

IRS REGULATIONS RELATING TO KEEPING DETAILED AUTOMOBILE LOGS

WEDNESDAY, MARCH 6, 1985

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE
AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2 p.m., in room SD–138, Dirksen Senate Office Building, Hon. James Abdnor (chairman) presiding.

Present: Senators Abdnor, Mattingly, and DeConcini.

CONGRESSIONAL WITNESS

OPENING STATEMENT

Senator ABDNOR. The subcommittee will come to order.

I want to welcome everyone to the hearing, and I would like to thank all of our witnesses for coming. I especially want to thank you, Commissioner Egger, for agreeing to appear.

I know we haven't seen eye-to-eye on the vehicle log controversy, but your willingness to discuss the matter is certainly appreciated.

Last summer, Congress enacted the Deficit Reduction Act. That major tax package contained hundreds of provisions, and the conference report of the bill ran some 1,400 pages in length. Although previous law required taxpayers to provide adequate documentation for deductions claimed on business vehicles, the Deficit Reduction Act added the requirement that those records be contemporaneous. On the basis of this one word, buried deep between the covers of that bill, the Internal Revenue Service, on October 24, 1984, issued approximately 15 pages of regulations requiring taxpayers in a nutshell to maintain detailed logs for business vehicles.

These regulations required that each vehicle use be documented by date, destination, mileage, and purpose.

These regulations took effect on January 21, and just about that time, I spent 10 days back in South Dakota. Wherever I went, I ran into irate farmers, businessmen, professionals, even clergy, who were complaining about it. More people were talking about vehicle logs than the weather, and that's saying a lot for January in South Dakota.

Several farmers and ranchers provided me with copies of the records they were attempting to keep. It was not unusual for a day's log on a single vehicle to run the length of a legal size page with separate detailed entries for each of the 20 or more trips.

One constituent, a recent refugee from Poland, and this is a fact, had mentioned that he was used to keeping such records. He said in Poland the people also were required to tell the government whether they had taken a vehicle, what they had done, where they had gone over there. He objected, and was given an option to go to prison or leave the country. That is how he came to be a constituent of mine.

Now, believe me, I am not for one moment accusing any member of our Government with motivations similar to the Polish regime, but the reporting requirements helped convince me that regulation had gone too far. The paper work placed on the typically honest taxpayer is unreasonable, and that's why I introduced legislation to repeal the log keeping regulation.

I must say, however, that the willingness of the Treasury and the IRS to take a second look, and I thank Commissioner Egger for that, at the original rules, is appreciated. The willingness of the Secretary and Commissioner Egger to meet personally with me and other concerned Senators on several occasions was also appreciated.

The recently published, revised regulations designed to ease the paper work burden of the original are certainly a step in the right direction. I have some serious concerns, both as to the degree of relief with the new regulations as well as their complexity.

I trust our distinguished witnesses will be able to provide a better understanding of where we are after these latest developments.

I want to welcome the Commissioner, and I want to assure you we do appreciate your willingness.

I know how things like this can mushroom. I went through this with withholding of income and dividends on the banking bill. It was something like this, only this covers even more people who have a concern.

We welcome you, Commissioner, and I want you to know your entire statement will be made a part of the record. You may proceed.

Our ranking member of the committee, Senator DeConcini and Senator Mattingly are here, so I am going to call on Senator Mattingly.

Senator MATTINGLY. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate this opportunity to examine these new regulations and recordkeeping on business standard vehicles.

The regulations came about as a result of the provisions of the Deficit Reduction Act of 1984, and, frankly, if the results of this provision had been generally known at the time, it would have never passed.

I think that bill was over 1,000 pages long, and we had only hoped that there were no other unpleasant surprises in it, which I am sure there probably are. That bill really illustrates why we need tax simplification in the United States.

As a result of the Firestone strong criticism, you all in the IRS modified its regulations last month, but I think in the eyes of most, that this modification really did not go far enough.

Mr. Egger, you and I didn't come to the Government to increase the amount of paper work small businessmen and farmers have to maintain in order to keep the Government off their backs.

We had a commitment to get the Government out of the way of the private sector and reduce the redtape of the various Government regulations.

I think those regulations really fly in the face of those goals. My commitment has not changed, and I, along with 49 other Senators, are cosponsors of Senate bill S. 260, which would repeal these new recordkeeping requirements.

In addition, we have before us your budget request for fiscal year 1986, and in the near future, we are going to see a supplemental appropriation request for another fiscal year, fiscal year 1985.

If no action has been taken on the repeal by the IRS, I intend to offer an amendment on a supplemental appropriations bill forbidding the use of any money by the IRS to enforce these new regulations until S. 260 passes the Senate.

Frankly, Mr. Egger, this bill, with my amendment, would be as dead as a possum in the center. We will put this behind us, and return to standards either voluntarily by the IRS or involuntarily, and I am ready, and I hope my colleagues are ready, to end this mistake.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you, Mr. Mattingly.

Now, the ranking minority member of the committee, Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

I appreciate your holding these hearings this afternoon on the recordkeeping issue.

As you can tell, Commissioner, this is a sensitive issue with us, and one that has touched every one of us. I wasn't aware of the provision in the 1,500 page Deficit Reduction Act last summer. Even though I voted against it, it wasn't because that was in it. It would have been an added reason. I wish I knew at the time.

I doubt whether many of our colleagues—those who voted for it or against it—knew that. This provision was one of the little items, it seems, that Treasury is able to slip into almost every tax bill which comes later to haunt us.

It doesn't seem to make much difference who is in the White House. We seem to get this operation from Treasury year after year. What does amaze me is that Ronald Reagan's U.S. Treasury would devise such an outrageous proposal.

This administration has given wonderful lip service to the notion of reducing paper work and redtape, but when it comes down to it, they are just as bureaucratic as previous administrations which is, indeed, a disappointment.

I do thank you, Mr. Egger, for taking steps to alleviate the creative burden here, and I join my good friend, Senator Mattlingly, in saying it isn't enough.

We in the Congress must act to repeal the automobile recordkeeping provision. This is why I joined the chairman of this subcommittee in cosponsoring his legislation.

Let me make it clear that this Senator doesn't endorse abuse of our tax system, but the business people I have talked with, and even when they have been audited by your agency, the abuses or mistakes have been relatively minor in this recordkeeping area.

I am sure that there are bright people at the IRS and Treasury who can come up with a better way to catch the cheaters without subjecting the honest citizen to something that is unbearable.

I don't know if you took the time to keep records of your regulations, Mr. Egger, but I might suggest that you and the people who wrote them just try to implement them.

I did that one day—stopping at several places in Arizona on my business—just to see how much time it would take. I calculated that in about a 12-hour period, I spent close to 1 hour just filling out the little form that I thought was necessary, and then I wasn't absolutely sure. So I would like to thank you, Mr. Chairman, for not only initiating the legislation, but allowing those of us who know something about it to have an opportunity to express our views to the Commissioner and, hopefully, hear some encouragement that this and other types of experiences and problems in our lives are going to be minimized.

Thank you.

Senator ABDNOR. Thank you, Senator.

At this time I am going to interrupt the segment, and call upon the distinguished Senator from Pennsylvania. We are happy to have with us the senior Senator from Pennsylvania, who is a member of the Finance Committee, and vitally concerned about this. Also I think he has his own legislation around, so Senator Heinz, we are happy to have you with us.

STATEMENT OF HON. JOHN HEINZ, U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. Mr. Chairman, first, let me thank you especially as chairman of this subcommittee for inviting me to testify, but more importantly, I commend you, Mr. Chairman, and Senator Mattingly, Senator DeConcini, for focusing the spotlight on this absolutely abhorrent of regulatory overkill.

I am very honored to be here, and I thank you, Senator Mattingly and others, for being cosponsors of S. 260, the bill to repeal the contemporaneous recordkeeping requirement as it relates to automobiles.

I am not really ashamed to sit here with Roscoe Egger, either, because in fairness to the IRS, which has tried to mitigate the law that requires contemporaneous recordkeeping, the fact is that it wasn't the IRS who wrote the law. It was the Congress. And I have to confess that as a member of the Senate Finance Committee, I find myself somewhat embarrassed by the excesses of the conferees who must have at some point knowingly or unknowingly put this into the law.

My only defense is I wasn't a conferee, and I hope that if I had been a conferee I would have been smart enough to catch it, and stop it, before it became the nightmare it has become.

I think, Mr. Chairman and Senator Mattingly have really encapsulated the problem. What we have before us here, the contemporaneous recordkeeping requirement, is a perfect example of when you can't find a sensible, reasonable, responsible way either to regulate or to enforce the law, the pre-1974 law, what you do is you punish everybody, innocent and guilty alike, by burying them under a mountain of paper.

Now, that sounds like a peripheral rhetoric. It is not. I brought here with me a little mail. This is mail from my mailroom on this subject for the last 5 days. This is 600 of the 3,000 letters I have received so far in the last couple of months. Each week the number of letters I receive increases. The week before I had about 300 or 400. The week before that, I had about 200 or 300, the week before that, I had 100 or 200, the week before that I had 100.

These, by the way, are not form letters. These are not from some manufactured postcard campaign. Some of them are handwritten, and I want to quote very briefly from just a few of these letters, and I will leave Xeroxes of the entire letters for the hearing record, because I think they illustrate precisely what's wrong here.

Senator ABDNOR. Why don't you read every one of them?

Senator DECONCINI. Speak for yourself.

Senator MATTINGLY. I have my own.

Senator HEINZ. I was going to leave six with you, but I can multiply that by 100, but I won't do that to you, my good friend and colleague from South Dakota, because I know you are aware intimately of the problem, and of the work he has done with IRS to get relief for farmers and the others in South Dakota early on, but let me quote briefly from the letter of Mr. R.J. Hutton from Chester County, PA, a small businessman. His town is West Grove, PA, and I quote, "In my own case, my automobile is used 100 percent for business with one minor exception. My home is three-tenths of 1 mile from my office. Therefore, I commute less than 1 mile a day and average about 16,000 miles a year in business travel. If I document," says Mr. Hutton, "each of those trips and all the other miscellaneous business that I have within 5 miles of my office, I will approach a telephone directory size log, the Chester County in suburban Philadelphia, it is about that thick, by year's end in 12 months. No auditor or IRS agent is ever going to review it."

June Insley, a realtor from Allison Park, PA, wrote: "The rules promulgated by the Government regarding cars and business has reached a new high in stupidity, and I hope you will have enough sense to act on repealing the law."

Peter Stahl, a pharmacist from Northampton, PA, wrote: "My personal use of the company car consists of driving home at night and back to work in the morning. Business use of the car consists of deliveries to customers—sometimes 10 or more a day—picking up merchan-

dise at a wholesaler manufacturer or another store, and going to trade shows and seminars. Trying to keep a detailed log—with various drivers—is really a full-time job."

David Walsh, vice president of a water supply company in Harrisburg, PA, wrote: "The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end."

Robert Purse, a florist from Pittsburgh, PA, wrote: "The regulations proposed by the IRS impose an impossible recordkeeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We believe the IRS regulations could significantly increase our cost of doing business and even our ability to stay in business."

And last, Edward Vogel, a businessman from Mars, PA, listed ways that the new requirements were affecting his business. I think you will find his points well taken.

First, he had to have a user instruction time/user log time to instruct his drivers on how to do this.

Second, the enforcement time by the employer. It takes a lot of his time to reprimand users who don't comply with the completion regulations.

There is interference with daily business activities. It takes time away from sales, extra bookkeeping.

There is the collection and verification of log sheets. Who should do it? The requirement itself takes a person away from their regular duties.

The additional cost for storage and maintenance of these records, and as we have heard for each vehicle, and one you may have an entire telephone book, what if you have a fleet of 200 vehicles? You have 200 telephone books per year data that no one will ever look at.

And, finally, simply the additional expense, namely, the paper for log sheets, the clipboards.

I suppose I might just sum up with one last letter, which is the comments from Thomas Welling, a contact lens service person in Port Matlida, PA, near State college.

He says in part: "Why must I list the destination, the purpose of my trip, and contact person? My destination is a different doctor's office each day. Shall I list restroom stops as personal, even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions." [Laughter.]

Senator HEINZ. Mr. Chairman, I support what I understand to be the thrust of your committee, which is failing action by the Congress to repeal S. 260 or some other appropriate vehicle the contemporaneous recordkeeping requirement, that you want to take some actions in this committee to deny the necessary funds to implement further the regulation.

If that is the thrust of what you are saying for the rest of us, I think it is a good message to send, and I trust that both the House and Senate will soon heed it.

Senator MATTINGLY. That was my request. I hope the rest of the committee will support that before the day's end.

Senator ABDNOR. Are there any questions? Senator DeConcini?

Senator DECONCINI. I commend the Senator from Pennsylvania for moving ahead with this legislation, too. The chairman of this committee is well aware and certainly astute enough to realize that we have a problem here, and need to do something with this legislation.

Senator ABDNOR. I just want to thank you, Senator Heinz. I know of your great interest in this, and what you have done up to this time, and hope we can work together to bring some needed results and come together on some kind of better proposal.

I think we have come a long way, with the Commissioner's moderation, whatever you want to call it, and we will hear more about that today from the witnesses we have.

If there are no further questions, we thank you very kindly, and thank you for all this paper. I am sure our staff people will be quite pleased——

Senator HEINZ. I don't ask that you make all 600 letters as part of the record. Only six. I will save these, if necessary, for the Congressional Record.

I thank you and commend you for all you are doing.

PREPARED STATEMENT

Senator ABDNOR. Before we move on I want to thank you for testifying. We will include your statement in the record at this point.

[The statement follows:]

STATEMENT OF SENATOR JOHN HEINZ

MR. HEINZ: I COMMEND YOU AND THIS COMMITTEE FOR HOLDING THIS HEARING TODAY, AND AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY BEFORE YOU AND DESCRIBE THE IMPORTANCE OF REPEALING THE NEW AUTOMOBILE RECORDKEEPING REQUIREMENTS.

THE GRASS ROOTS MOVEMENT TO REPEAL THE "CONTEMPORANEOUS" RECORDKEEPING PROVISION HAS BECOME OVERWHELMING. IT IS THE ONE ISSUE THAT I HEAR PEOPLE COMPLAINING ABOUT EVERYTIME I HOLD A TOWN MEETING. TO DATE, I HAVE RECEIVED APPROXIMATELY 2000 LETTERS FROM MY CONSTITUENTS DEMANDING REPEAL OF THE PROVISION -- LAST WEEK I RECEIVED ANOTHER 403 LETTERS -- SO YOU CAN SEE THAT THE DEMAND FOR REPEAL IS NOT SLOWING DOWN. IN FACT, WHEN SENATOR PRYOR AND I INTRODUCED S. 260 TO REPEAL THE CONTEMPORANEOUS RECORDKEEPING PROVISION AND RETURN TO PRIOR LAW, WE HAD 25 COSPONSORS. TODAY, EVEN AFTER THE IRS ISSUANCE OF NEW REGULATIONS, WE HAVE 53 COSPONSORS.

THE NEW IRS REGULATIONS OFFER RELIEF FOR A FEW - MOSTLY THE FARMERS AND THE SALES OR SERVICE PEOPLE WHO ARE CONSTANTLY IN THEIR CARS. WHILE THE NEW IRS SAFE HARBOR RULES OFFER RELIEF TO SOME, THERE ARE TENS OF THOUSANDS OF SMALL BUSINESSES WHO WOULD BE LEFT TO SUFFER FROM THIS UNJUST PAPERWORK BURDEN.

THE FAULT DOES NOT LIE WITH IRS; IT IS REQUIRED TO UPHOLD AND ENFORCE THE LAWS WHICH THIS CONGRESS PASSES, AND THE LAW CLEARLY REQUIRES "CONTEMPORANEOUS" RECORDS TO BE MAINTAINED. BAD LAW DEFINITELY PRODUCES BAD REGULATIONS, AND THIS IS CLEARLY A BAD LAW.

THE IRS ESTIMATES THAT IN 1979 APPROXIMATELY 11.3 MILLION INDIVIDUALS CLAIMED A TAX DEDUCTION FOR AUTOMOBILES. THIS NUMBER DOES NOT EVEN TAKE INTO ACCOUNT CORPORATIONS,

SO THERE ARE NO RECENT FIGURES AVAILABLE TO DETERMINE HOW MANY PEOPLE ARE AFFECTED. WHAT IS CLEAR IS THAT THIS PROVISION ADVERSELY AFFECTS ALL SEGMENTS OF THE BUSINESS AND AGRICULTURE COMMUNITIES IN A HEAVYHANDED AND NEEDLESS WAY.

LET ME GIVE YOU EXAMPLES OF HOW THIS IS AFFECTING THE PEOPLE IN PENNSYLVANIA, AND OF WHAT THEY THINK ABOUT THE PROVISION. THESE ARE QUOTES FROM THEIR LETTERS, NOT MY WORDS.

R.J. HUTTON:

> A SMALL BUSINESSMAN WROTE FROM WESTGROVE, PA. "I DO NOT UNDERSTAND THE NEED FOR SUCH RECORD_ KEEPING AND HOW IT COULD POSSIBLY ENHANCE THE TAX REVENUE; AT LEAST, TO THE EXTENT OF OVER-COMING THE HEADACHES, TIME AND EFFORT SPENT BY ME AND OTHERS IN OUR ORGANIZATION FOR SUCH DE-TAILED RECORDKEEPING. IN MY OWN CASE MY AUTO-MOBILE IS USED 100% FOR BUSINESS WITH ONE MINOR EXCEPTION. MY HOME IS THREE TENTHS OF A MILE FROM MY OFFICE. THEREFORE, I "COMMUTE" LESS THAN A MILE A DAY AND AVERAGE ABOUT 16,000 MILES A YEAR IN BUSINESS TRAVEL. IF I DOCUMENT EACH OF THOSE TRIPS AND ALL THE OTHER MISCELLANEOUS BUSINESS THAT I HAVE WITHIN FIVE MILES OF MY OFFICE, I WILL APPROACH A TELEPHONE DIRECTORY SIZE LOG BY YEAR'S END. NO AUDITOR OR IRS AGENT IS EVER GOING TO REVIEW IT. SUCH A LAW IS NOT A GOOD LAW. PLEASE, ON BEHALF OF AMERICAN BUSINESS EFFICIENCY AND PRODUCTIVITY CHANGE AND RID THE COUNTRY OF THIS OPPRESSIVE, NEEDLESS LAW."

JOAN INSLEY, REALTOR IN ALLISON PARK, PA WROTE:

"THE RULES PROMULGATED BY THE GOVERNMENT REGARDING THE USE OF CARS IN BUSINESS HAS REACHED A NEW HIGH IN STUPIDITY AND I CERTAINLY HOPE THAT YOU WLLL HAVE ENOUGH SENSE TO ACT ON REPEALING THE LAW."

PETER STAHL, A PHARMACIST FROM NORTHAMPTON, PA WROTE:

"MY PERSONAL USE OF THE COMPANY CAR CONSISTS OF DRIVING HOME AT NIGHT AND BACK TO WORK IN THE MORNING. BUSINESS USE OF THE CAR CONSISTS OF DELIVERIES TO CUSTOMERS (SOMETIMES 10 TO MORE A DAY), PICKING UP MERCHANDISE AT A WHOLESALER MANUFACTURER OR ANOTHER STORE, AND GOING TO TRADE SHOWS AND SEMINARS. TRYING TO KEEP A DETAILED LOG (WITH VARIOUS DRIVERS) IS REALLY A FULL TIME JOB."

DAVID WALSH, A VICE PRESIDENT OF A WATER SUPPLY CO. IN HARRISBURG, PA WROTE:

THE IRS RULING WILL HAVE A VERY REAL NEGATIVE IMPACT ON OUR COMPANY DUE TO BOTH THE LOSS OF TIME AND PRODUCTIVITY OF OUR EMPLOYEES KEEPING THE RECORDS. IN THE WATER UTILITY BUSINESS, A VEHICLE IS A NECESSARY TOOL REQUIRED TO CARRY OUT THE SERVICE TO OUR CUSTOMERS. WE ALL STRIVE FOR EFFICIENCY IN ORDER TO KEEP OUR RATES REASONABLE; THIS DOES NOT WORK TO THAT END.

ROBERT PURSE, FLORIST FROM PITTSBURG, PA WROTE:

THE REGULATIONS PROPOSED BY THE IRS IMPOSE AN IMPOSSIBLE RECORDKEEPING BURDEN ON SMALL BUSINESSES SUCH AS OURS WHICH USE AUTOMOBILES EXTENSIVELY FOR BUSINESS PURPOSES THROUGHOUT

THE YEAR. WE BELIEVE THE IRS REGULATIONS COULD SIGNIFICANTLY INCREASE OUR COST OF DOING BUSINESS AND EVEN OUR ABILITY TO STAY IN BUSINESS.

EDWARD VOGEL, A BUSINESSMAN FROM MARS, PA LISTED WAYS THAT THE NEW REQUIREMENTS WERE AFFECTING HIS BUSINESS. I BELIEVE THAT YOU WILL FIND THE POINTS WELL TAKEN:

- USER INSTRUCTION TIME/USER LOG TIME - THE TIMES NEEDED TO INSTRUCT USERS ON THE CORRECT COMPLETION OF THE LOG SHEET AND THE TIME NEEDED TO LOG MILEAGE, DESTINATION, ETC.
- ENFORCEMENT TIME BY THE EMPLOYER - THE TIME TO REPRIMAND THOSE USERS WHO DO NOT COMPLY WITH THE COMPLETION REGULATIONS.
- INTERFERENCE WITH DAILY BUSINESS ACTIVITIES - TAKES AWAY FROM SALES TIME, SERVICE TIME, ETC.
- ADDITIONAL BOOKKEEPING - EXTRA WORKLOAD FOR AN ALREADY BUSY PERSON.
- COLLECTION AND VERIFICATION OF LOG SHEETS - WHO SHOULD DO IT? THIS REQUIREMENT TAKES A PERSON AWAY FROM THEIR REGULAR DUTIES.
- ADDITIONAL COST FOR STORAGE AND MAINTENANCE OF THESE RECORDS (FILE CABINETS, ETC).
- ADDITIONAL EXPENSE FOR SUPPLIES NEEDED BY EACH USER (LOG SHEETS, CLIPBOARDS, ETC).

AND FINALLY COMMENTS FROM THOMAS WELLING, A CONTACT LENS SERVICE PERSON IN PORT MATLIDA, PA:

"FOR YEARS, I HAVE RECORDED THE BEGINNING AND ENDING MILEAGE OF MY DAILY BUSINESS TRIPS, NO MATTER IF I USED MY CAR, OR IN RARE EMERGENCIES, MY TRUCK. I KEEP RECORDS OF GASOLINE USED FOR BUSINESS ONLY, KEEP ALL RECEIPTS FOR MAINTENANCE

OF MY BUSINESS CAR. WHY MUST I LIST THE DESTINATION, PURPOSE OF TRIP, AND CONTACT PERSON? MY DESTINATION IS A DIFFERENT DOCTOR'S OFFICE EACH DAY. SHALL I LIST RESTROOM STOPS AS "PERSONAL" EVEN THOUGH I'M ON MY WAY TO AN OFFICE 100 MILES AWAY? THE IRS IS ENTITLED ONLY TO A RECORD OF AUTO EXPENSES FOR BUSINESS PURPOSES, NOT A DETAILED LOG OF MY EVERY MOVE. A JEALOUS WIFE ASKS FEWER QUESTIONS."

I AM SURE THAT YOU ARE ALSO HEARING FROM YOUR CONSTITUENTS. THE PUBLIC IS MAD AND THEY HAVE A RIGHT TO BE - THE LAW IN 1984 WENT TOO FAR.

MY BILL, S. 260 REPEALS THE "CONTEMPORANEOUS" RECORD-KEEPING REQUIREMENT, AND RETURNS TO THE LAW IN OPERATION PRIOR TO 1985. PREVIOUSLY A TAXPAYER WAS REQUIRED TO MAINTAIN ADEQUATE RECORDS OR HAVE OTHER SUFFICIENT EVIDENCE TO CORROBORATE HIS OWN STATEMENT. REQUIRING SOME FORM OF RECORDKEEPING SHOULDN'T CHANGE -- WHAT MUST CHANGE IS THE CONTEMPORANEOUS REQUIREMENT. THE NEW LAW MEANS THAT VIRTUALLY EACH TIME A PERSON ENTERS HIS OR HER CAR, AN ENTRY MUST BE MADE IN A TRAVEL LOG. THE RECORD HAS TO BE MADE "CONTEMPORANEOUS" AND CANNOT BE RECONSTRUCTED AT A LATER DATE. THE END RESULT OF THESE NEW RULES AND REGULATIONS HAS BEEN A MASSIVE AMOUNT OF NEW PAPERWORK PLACED ON SMALL BUSINESSES AND THEIR EMPLOYEES.

THE REASON FOR THE CONTEMPORANEOUS RECORDKEEPING REQUIREMENT WAS TREASURY'S CONCERN THAT TAXPAYERS WERE CLAIMING TOO LARGE A DEDUCTION. THERE PROBABLY ARE A SMALL NUMBER OF TAXPAYERS WHO ARE CHEATING -- HOWEVER, THE "CONTEMPORANEOUS" REQUIREMENT GOES TO FAR -- IT IS LIKE USING A SLEDGE HAMMER TO KILL A FLY. TO CATCH A

FEW, WE ARE NOW CAUSING A SEVERE HARDSHIP FOR HONEST TAXPAYERS, I THINK THE CORRECT APPROACH IS TO RETURN TO PRIOR LAW.

THE DEFICIT REDUCTION ACT OF 1984 ALSO CONTAINED PROVISIONS UNDER THE FRINGE BENEFIT SECTION WHICH, WILL REQUIRE THAT EMPLOYEES BE TAXED ON THE VALUE OF THE PERSONAL USE PORTION OF THEIR COMPANY CAR. THE PURPOSE OF THE PROVISION IS TO PREVENT COMPANIES FROM PROVIDING "COMPANY CARS" AS A FORM OF NONTAXABLE INCOME TO THEIR EXECUTIVES. IT IS A GOAL I FULLY SUPPORT; I AM WORRIED, HOWEVER, ABOUT THE IMPACT THIS PROVISION WILL HAVE ON SMALL BUSINESSES, WHERE THE USE OF THE COMPANY CAR IS NOT FOR TAX AVOIDANCE. WHILE, MY BILL DOES NOT ADDRESS THIS ISSUE, I INTEND TO REQUEST HEARINGS ON THE FRINGE BENEFIT PORTION OF THE ACT TO DETERMINE ITS IMPACT ON SMALL BUSINESSES AND THE CORRELATION BETWEEN THE FRINGE BENEFIT SECTION AND THE CONTEMPORANEOUS RECORDKEEPING PROVISIONS.

SINCE THE ENACTMENT OF THIS LEGISLATION, MANY PROBLEMS HAVE COME TO LIGHT. I THINK THE OPPORTUNITY TO EXAMINE THESE NEW RULES WILL BE WELCOMED BY MANY IN THE SMALL BUSINESS AND FARMING SECTOR OF THIS COUNTRY. YOU AND THE OTHER MEMBERS OF THE COMMITTEE ARE TO BE COMMENDED, AND I WILL BE MORE THAN HAPPY TO WORK WITH YOU ON THESE IMPORTANT ISSUES. FOR MANY YEARS, WE'VE TRIED TO REDUCE THE PAPER WORK BURDEN FACING OUR SMALL BUSINESSES. WITH THIS NEW RULE,, WE'VE HEADED IN EXACTLY THE OPPOSITE DIRECTION. CERTAINLY, EXPANDED RECORDKEEPING IN THE TAX AREA CAN OFTEN IMPROVE COMPLIANCE, BUT I THINK WE HAVE TO CONSIDER THE BURDEN IT PLACES ON SMALL BUSINESSES. IN THIS CASE THE "CONTEMPORANEOUS" RECORDKEEPING REQUIREMENT ARE CLEARLY TOO BURDENSOME, AND SHOULD BE REPEALED.

I HOPE THAT THIS CAN BE DONE IN THE VERY NEAR FUTURE.

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

STATEMENT OF HON. ROSCOE EGGER, COMMISSIONER

Senator ABDNOR. Commissioner Egger, I thank you for being so patient, and just be thankful I didn't ask Senator Heinz to give them to you. I am sure that's all you would need. I'm sure you have your own supply back at the office.

Commissioner, I'm sorry we kept you waiting. Please proceed.

Mr. EGGER. Before I begin the testimony, Mr. Chairman, I think it is important to try to keep our sense of humor, and so I brought with me a couple of cartoons which I will share with you, not necessarily as part of the record. One of them depicts a couple in an automobile with a great log tied on top, and it says, "Herbert and Kate were told starting in 1985 they must keep a log on their car if it is used for both business and pleasure. Naturally, they think this is a ridiculous law." [Laughter.]

Mr. EGGER. The other one depicts our IRS Audit Department, and a rather fierce looking character has a taxpayer with his hands tied behind his back under a light, and says, "We are disallowing some of the mileage you have declared. Your entry on March 15 indicates that you took the scenic route and not the most direct route." [Laughter.]

Mr. EGGER. There is a little sense of humor in all of this difficulty.

I don't mean to suggest that this is not serious business. Obviously, it is, and so I would just like to say sometime we need to keep perspective.

Let me paraphrase the opening statement with the thought that it will go into the record in its entirety, and talk a little bit today about some of the background, and some of the things we have done, and some of the things that we believe can be done, but also some of the problems that we have attempted to solve between us and the Congress.

Before these amendments in the Tax Reform Act of 1984, taxpayers, of course, could deduct the expenses for the business use of automobiles only to the extent that they could establish the nature and extent of business use. Types of records which were required to substantiate the use of automobiles varied depending upon whether the travel was away from home or local. Expenses for travel away from home were required to be substantiated under section 274(d) by an adequate record or by sufficient evidence corroborating the taxpayer's own statement.

On the other hand, local travel expenses were subject to the more general substantiation rules of section 162. Under that section, the taxpayer can deduct ordinary and necessary expenses incurred in carrying

on a trade or business, but bears the burden of proving the amount of expense and its purpose.

Now, the courts have consistently denied deductions when taxpayers failed to provide proof of expenses for business use of automobiles. Despite the longstanding results regarding the need to substantiate these expenses, problems remain in the substantiation area. These problems frequently take the form of overstated proportions of business usage of automobiles.

While the Service does not have a nationwide compliance project to check specifically on automobile substantiation, we do have some specific data available on the issue. This data comes from our most recent TCMP Program, from the statistics of income reports, as well as from some selected cases which we now have under examination in the field.

Let me briefly review some of this information for you.

First of all, our TCMP Program is an attempt to measure taxpayer compliance as well as enforcement through a research effort. The TCMP survey, which we do every 3 years, is of individual tax returns filed on forms 1040, 1040A, and 1040EZ. It is a stratified random sample of about 50,000 returns on file that are representative of the entire filing population. Returns that are selected for this survey undergo a comprehensive examination of every line item on the return in order to determine the accuracy and the true tax liability. And I might tell you that those examinations also include probing for unreported income, and the like.

The most recent TCMP data involving automobile expenses, which are shown on the schedule C, which is the profit and loss statement, indicate that about 5½ million taxpayers claimed about $10.6 billion in automobile expenses. Of that 5½ million, 48 percent made errors on their returns; 1.8 million taxpayers overstated their automobile expenses by something more than $1.4 billion; and about three-quarters of 1 million taxpayers understated their deductions by about $400 million.

Another way these expenses find their way into the tax returns is by form 2106, which is the form used for reporting employee business expenses. In 1979, some 5.8 million individual taxpayers claimed a total of $10.7 billion for employee business expense deductions. This line item, of course, includes employee business expenses other than auto expenses. From that amount, the amount of overstated deductions was $2.8 billion. Another group of taxpayers understated their allowable expenses by $700 million.

Summarizing, then, from the TCMP data that we have from the automobile expenses on schedule C and the 2106 form, we estimate that about 50 percent of the something over 11 million returns that claimed these expenses would be subject to adjustment. While we do not have current estimates of lost revenue resulting from the overstatement of these expenses, our data would indicate the taxpayers have claimed something over $3 billion in excess tax benefits.

But the numbers tell only part of the story. In examination after examination, our revenue agents and tax auditors are faced with records which fail to show the extent of business and personal use.

Primarily, the taxpayers have woefully inadequate records, or none at all. In these cases we are forced to deal with what the Joint Committee on Taxation has identified as after-the-fact, optimistic estimates—based on inexact recollection. Not surprisingly, significant problems continue.

In order to show you some of the problems that IRS employees face in this compliance area, we contacted a number of our regions, and asked them for current firsthand experience. These responses, which I will detail here briefly, indicate the type of problems that are typically seen by our people in the field.

In the first example, one district completed examinations of some 937 employees of one large corporation. These individual cases were selected because the issue was identified during the audit of the corporation itself. Managerial, administrative, and field employees were supplied automobiles by the corporation, which also paid all the expenses for these automobiles. No bookkeeping was required by the employees. The Service made adjustments in 92.6 percent of these cases, for total additional assessments in the amount of $800,000.

In another area, we had several large corporate cases. In one instance, the use of luxury automobiles by company officers resulted in adjustments of more than $240,000. In one more instance the use of automobiles by the officers of the company resulted in adjustments of $65,000. This same district has another very large case under examination at the moment.

The districts in one region identified a minimum of 1,116 cases that are either in progress or recently closed, involving taxpayers who claimed 100 percent business use of their cars. The region found that almost without exception, examinations of these returns resulted in adjustments to the amount claimed—almost exclusively for lack of adequate records.

Some of the specific cases include one large corporation, where $35,000 in additional employment taxes were assessed growing out of the personal use of company cars. In another one, a family professional corporation had three automobiles. All of them were overstated to the tune of over $16,000. In another professional corporation, examination resulted in $4,000 of additional tax to each of the professionals in the corporation.

My testimony lists a sampling of another list of cases where we show the amounts claimed on the returns, and amounts that were allowed after audit, and it goes something like this: Amount claimed, $3,850, the amount allowed, zero; no records; amount claimed $2,358; the amount allowed, zero; no records. And it goes on, Mr. Chairman.

So the list here should give you some feel for the kind of problems that are out there, and the kinds of things that were thought could be dealt with by the legislation, and by our regulations.

In the Tax Reform Act of 1984, the Congress sought to require the taxpayers to substantiate with adequate and contemporaneous records any credit or deduction with respect to expenses governed by the section.

The only new word of significance in the law, as you already pointed out, is the word contemporaneous, and that's generally taken to mean occurring or originating during the same time, or at or about the same time. Congress removed from the statute the taxpayer's ability to rely on the use of other corroborating evidence.

According to the legislative history of the Tax Reform Act, this legislative amendment was intended to ensure that some type of record—a log, a diary, a journal of the business use of the property—was made at or near the time that the property was used. For example, the Ways and Means Committee's supplemental report stated that "[t]he committee understands that significant compliance problems exist under current law due to overstatements of the proportion of business use of automobiles * * *."

They stated further that it was their intention to elevate the standard of proof. This abuse, the committee said, "undermine[d] public confidence in the fairness of the tax law and in the ability of the Internal Revenue Service to adequately enforce those laws."

Thus, the committee recommended that only "contemporaneous records reflecting * * * [the] business and personal use of tangible property * * *" would be sufficient to substantiate deductions or credits.

In the conference committee's report, the conferees adopted the rule that taxpayers are required to substantiate the business use of listed property by adequate contemporaneous records, records which would reflect with substantial accuracy the business use of the property.

They also noted that with respect to automobiles, and this is in the committee report, "logs recording the date of the trip and the mileage driven for business purposes must be kept."

The joint committee report stated the problem with the language that I referred to earlier, these after-the-fact optimistic estimates, and pointed out the problems.

I might tell you further that the committee report goes on to state, Mr. Chairman, that not only must these records be kept in meticulous fashion, and be made available; it went on to say if the records were not in fact kept,there would be a presumption of negligence on the part of the taxpayer. That is how strongly the committee felt about it.

One of the key steps in the process of implementing any new tax law, of course, is the issuance of regulations.

In this case, the IRS' temporary and proposed regulations on substantiation through adequate and contemporaneous records came out on October 24.

Here, we defined the record as including a log or journal, or diary, or similar records, which were pretty much the language of the committee report. We noted that log entries were required for the business property.

In February, after discussions with many members of this body as well as the House of Representatives, we took the unusual step of further modifying our regulations before the comment period had ended. We supplemented the October 24 regulations by publishing revisions to

them in an attempt to respond to the needs that taxpayers had identified, and where we had perhaps gone too far in the earlier regulations.

We did this all with the hope of generating even further discussion of the problems that taxpayers are having with the regulations, since the comment period doesn't end until April 8, and we expect to hear further.

We dealt, in that supplement, with specifics in the case of farm vehicles, in the case of employers where they were fleet operators, and essentially no personal use of the cars with the possible exception of the employees taking the cars home at night as a means of securing them or garaging them for the employer.

We dealt with the people who were out on the street or on the road every day, such as deliveries or sales, service personnel, and so on.

In each of those instances, we provided safe harbors, so that under those particular conditions the taxpayers can opt out of keeping any records at all, and simply claim 80 percent business use, and 20 percent personal use in the case of commercial-type vehicles, or 70 percent and 30 percent in the case of automobiles.

I need to say in closing up here, Mr. Chairman, that I think that we have demonstrated a willingness to try our best to work with the Congress and to be available to taxpayers to see whether we can arrive at the final set of rules here that will meet the needs of substantiation of expenses claimed, based on the numbers of letters that you have received, obviously, and the letters and phone calls that we have received, and so on. And I wonder whether our figure of 11 million returns is accurate or not. It sounds like a great deal more than that of people who are claiming automobile expenses.

If we expect taxpayers to continue to warrant our faith in the self-assessment system, we have to endeavor to assure them that the system works, that the system is fair. If taxpayers lost their respect for the system, we can expect serious consequences in the area of voluntary compliance.

This is not a question of pure tax revenues; it is, rather, a question of the fairness of the system. To the extent that our substantiation rules permit highly visible abusive cases to exist, I assure you we will see the consequences.

I, myself, as a tax administrator, see no alternative to the maintenance of some type of record for the substantiation of the use of automobiles where there is a mixed personal and business use. Perhaps there is such a solution. Today, I do not know that.

Let me assure you that in our comment period, which continues until early April, and in our 3-day hearing on this beginning April 16, we will be open to suggestions, open to comments, open to ideas from people, as to how we might modify these regulations in order to make them less burdensome, but nonetheless effective for the purpose for which they were designed.

I, myself, do not believe that simply repealing this rule is solving the problem. To do that without putting in its place some sort of solution simply ignores the problem, and it is not going to go away.

In any event, Mr. Chairman, I would be happy to try to answer any of your questions.

PREPARED STATEMENT

Senator ABDNOR. Thank you, Commissioner. We will insert your statement in the record at this point.

[The statement follows:]

STATEMENT OF ROSCOE L. EGGER, JR.

IT IS A PLEASURE TO BE HERE TODAY TO DISCUSS IRS REGULATIONS RELATING TO RECORDKEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY. IN MY TESTIMONY, I WILL DISCUSS THE ADMINISTRATIVE PROBLEMS UNDER PRIOR LAW; THE AMENDMENTS MADE BY PUBLIC LAW 98-369, THE TAX REFORM ACT OF 1984; AND OUR EFFORTS TO IMPLEMENT THE LAW.

WITH ME TODAY ARE SEVERAL OFFICIALS FROM THE SERVICE FAMILIAR WITH THIS ISSUE. WE WILL BE AVAILABLE TO TRY TO ANSWER ANY QUESTIONS YOU MAY HAVE AT THE CONCLUSION OF MY OPENING STATEMENT.

RECORDKEEPING UNDER PRIOR LAW

PRIOR TO THE AMENDMENTS MADE BY THE TAX REFORM ACT OF 1984, TAXPAYERS COULD DEDUCT EXPENSES FOR THE BUSINESS USE OF AN AUTOMOBILE ONLY TO THE EXTENT THAT THEY COULD ESTABLISH THE NATURE AND EXTENT OF THE BUSINESS USE. THE TYPES OF RECORDS WHICH WERE REQUIRED TO SUBSTANTIATE THE USE OF AUTOMOBILES VARIED DEPENDING UPON WHETHER THE TRAVEL WAS "AWAY FROM HOME" OR "LOCAL". EXPENSES FOR TRAVEL AWAY FROM HOME WERE REQUIRED TO BE SUBSTANTIATED UNDER SECTION 274 (D) BY "ADEQUATE RECORDS OR BY SUFFICIENT EVIDENCE CORROBORATING . . . [THE TAXPAYER'S] OWN STATEMENT". ON THE OTHER HAND, LOCAL TRAVEL EXPENSES WERE SUBJECT TO THE MORE GENERAL SUBSTANTIATION RULES OF SECTION 162. UNDER SECTION 162, A TAXPAYER MAY DEDUCT ORDINARY AND NECESSARY EXPENSES INCURRED IN CARRYING ON A TRADE OR BUSINESS, BUT BEARS THE BURDEN OF PROVING THE AMOUNT OF AN EXPENSE AND

ITS BUSINESS PURPOSE.1/ THE COURTS HAVE CONSISTENTLY DENIED CLAIMED DEDUCTIONS WHEN TAXPAYERS HAVE FAILED TO PROVIDE PROOF OF EXPENSES FOR THE BUSINESS USE OF AUTOMOBILES.2/

ADMINISTRATIVE PROBLEMS UNDER PRIOR LAW

DESPITE THE LONGSTANDING RULES REGARDING THE NEED TO SUBSTANTIATE EXPENSES, PROBLEMS REMAINED IN THE SUBSTANTIATION

1/ FOR LOCAL TRAVEL EXPENSES, COURTS HAVE USED THE SO-CALLED COHAN RULE (SEE COHAN V. COMMISSIONER, 39 F.2D 540 (2D CIR. 1930) TO APPROXIMATE DEDUCTIBLE EXPENSES WHERE SUFFICIENT RECORDS DID NOT EXIST. SINCE THE ENACTMENT OF SECTION 274 (D) IN 1962, THE COHAN RULE HAS NOT BEEN APPLICABLE TO TRAVEL EXPENSES INCURRED BY TAXPAYERS WHILE AWAY FROM HOME.

2/ SEE E.G. TIDWELL V. COMMISSIONER, 298 F.2D 864 (4TH CIR. 1962) (TAXPAYER DID NOT SATISFY BURDEN OF ESTABLISHING BY "DETAILED EVIDENCE" THE AMOUNT TO BE ALLOCATED TO BUSINESS AND PERSONAL USE); LUSTMAN V. COMMISSIONER, 322 F.2D 253 (3RD CIR. 1963) (TAXPAYER WAS UNABLE TO FURNISH BUSINESS RECORDS TO SUBSTANTIATE EXTENT OF BUSINESS USE OF AUTOMOBILE; TAXPAYER OFFERED ONLY HIS TESTIMONY); COBB V. COMMISSIONER, 77 T.C. 1096 (1981) (TAXPAYER KEPT NO "SPECIFIC RECORDS" AS TO THE BUSINESS USE OF HIS AUTOMOBILES; THE LACK OF RECORDS PREVENTED THE COURT FROM DETERMINING THE AMOUNT OF THE ALLOWABLE DEDUCTIONS WITH REASONABLE ACCURACY); HYNES V. COMMISSIONER, 74 T.C. 1266 (1980) (TAXPAYER'S TESTIMONY UNSUPPORTED BY ANY OTHER EVIDENCE WAS NOT SUFFICIENT TO ESTABLISH THAT THE AUTOMOBILE EXPENSES WERE INCURRED FOR BUSINESS PURPOSES); BUSSABARGER V. COMMISSIONER, 52 T.C. 819 (1969) (TAXPAYER'S FAILURE TO MAINTAIN MILEAGE OR EXPENSE RECORDS RESULTED IN DETERMINATION THAT TAXPAYER FAILED TO ESTABLISH EXTENT OF BUSINESS USAGE CLAIMED).

AREA. THESE PROBLEMS FREQUENTLY TOOK THE FORM OF OVERSTATED PROPORTIONS OF BUSINESS USAGE OF AUTOMOBILES. WHILE THE SERVICE DOES NOT HAVE ANY NATIONWIDE COMPLIANCE PROJECT TO CHECK SPECIFICALLY ON AUTOMOBILE SUBSTANTIATION, WE DO HAVE SOME SPECIFIC DATA AVAILABLE ON THE ISSUE. THIS DATA COMES FROM RECENT TAXPAYER COMPLIANCE MEASUREMENT PROGRAM (TCMP) SURVEYS, FROM STATISTICS OF INCOME REPORTS, AND FROM SELECTED CASES NOW UNDER EXAMINATION IN THE FIELD. LET ME BRIEFLY REVIEW SOME OF THIS INFORMATION FOR YOU.

THE SERVICE CONDUCTS A TAXPAYER COMPLIANCE MEASUREMENT PROGRAM TO MEASURE TAXPAYER COMPLIANCE WITH THE TAX LAWS AND REGULATIONS. THIS LONG-RANGE ENFORCEMENT AND RESEARCH EFFORT MEASURES TOTAL COMPLIANCE AND THE MAJOR CHARACTERISTICS OF COMPLIANCE AND NONCOMPLIANCE. IN ADDITION, THIS INFORMATION IS USED TO FORMULATE THE RETURN CRITERIA THE SERVICE USES TO SELECT RETURNS FOR EXAMINATION. A TCMP SURVEY OF INDIVIDUAL TAX RETURNS FILED ON FORMS 1040, 1040A OR 1040EZ IS CONDUCTED EVERY THREE YEARS. THE INDIVIDUAL SURVEY IS BASED UPON A STRATIFIED RANDOM SAMPLE OF APPROXIMATELY 50,000 FILED RETURNS THAT ARE REPRESENTATIVE OF THE ENTIRE FILING POPULATION. RETURNS SELECTED FOR THE TCMP SURVEY UNDERGO A COMPREHENSIVE EXAMINATION OF EVERY LINE ITEM ON THE TAX RETURN IN ORDER TO DETERMINE ITS ACCURACY AND THE TRUE TAX LIABILITY. THE MOST RECENT DATA AVAILABLE ARE FOR TAX YEAR 1979; TAX YEAR 1982 DATA WILL BE AVAILABLE IN A FEW MONTHS.

THE MOST RECENT TCMP DATA INVOLVING AUTOMOBILE EXPENSES SHOWN ON SCHEDULE C, PROFIT OR (LOSS) FROM BUSINESS OR PROFESSION, INDICATE THAT APPROXIMATELY 5.5 MILLION TAXPAYERS CLAIMED ALMOST $10.6 BILLION IN AUTOMOBILE EXPENSES. FORTY-EIGHT PERCENT OF THE 5.5 MILLION TAXPAYERS WHO CLAIMED AUTOMOBILE EXPENSES MADE ERRORS ON THEIR RETURNS; 1.8 MILLION TAXPAYERS OVERSTATED THEIR AUTOMOBILE EXPENSES BY OVER $1.4

BILLION WHILE SOMEWHAT LESS THAN 1 MILLION TAXPAYERS UNDERSTATED DEDUCTIONS BY $434 MILLION.

ANOTHER WAY THESE EXPENSES FIND THEIR WAY INTO TAX RETURNS IS BY WAY OF FORM 2106, EMPLOYEE BUSINESS EXPENSES. IN 1979, 5.8 MILLION INDIVIDUAL TAXPAYERS CLAIMED A TOTAL OF $10.7 BILLION FOR EMPLOYEE BUSINESS EXPENSE DEDUCTIONS. (THIS LINE ITEM INCLUDES ALL EXPENSES LISTED ON FORM 2106 3/ WHICH INCLUDE ALL EMPLOYEE BUSINESS EXPENSES, SUCH AS AUTOMOBILE EXPENSES AND OTHER TRAVELING EXPENSES FOR MEALS AND LODGING.) OF THAT AMOUNT, THE AMOUNT OF OVERSTATED DEDUCTIONS WAS $2.8 BILLION. ANOTHER GROUP OF TAXPAYERS UNDERSTATED THEIR ALLOWABLE EXPENSES BY $700 MILLION.

TO SUMMARIZE THE SCHEDULE C AND FORM 2106 DATA, WE ESTIMATE THAT APPROXIMATELY 50% OF THE 11.3 MILLION RETURNS CLAIMING THESE EXPENSES WOULD BE SUBJECT TO ADJUSTMENT. WHILE WE DO NOT HAVE CURRENT ESTIMATES OF LOST REVENUE RESULTING FROM THE OVERSTATEMENT OF EXPENSES, OUR DATA INDICATE THAT TAXPAYERS CLAIMED WELL OVER $3 BILLION IN EXCESS TAX BENEFITS.

3/ IN ORDER TO BETTER UNDERSTAND THE PORTION OF THESE ADJUSTMENTS THAT MAY BE APPLICABLE TO INADEQUATE RECORDS RELATING TO AUTOMOBILE EXPENSES, WE TOOK A QUICK SAMPLE OF TCMP CASES AND ANALYZED THE WORK PAPERS ASSOCIATED WITH THESE CASES. THIS SMALL SAMPLE SHOWS THAT 70% OF FORM 2106 EXPENSES THAT WERE ADJUSTED RELATED TO AUTOMOBILE EXPENSES. FURTHER, ABOUT 40% OF THE ADJUSTMENTS WERE MADE BECAUSE TAXPAYERS WERE UNABLE TO SHOW THAT THEY USED THEIR VEHICLES FOR BUSINESS PURPOSES. ALTHOUGH THIS INFORMATION IS BASED ON A RANDOM SAMPLE, IT SHOULD NOT BE CONSIDERED STATISTICALLY PRECISE.

THE NUMBERS TELL ONLY PART OF THE STORY. AS TAX ADMINISTRATORS WE MUST FACE THE PROBLEMS OF SUBSTANTIATION OF EXPENSES ON A DAILY BASIS. IN EXAMINATION AFTER EXAMINATION, OUR EXAMINERS ARE FACED WITH RECORDS WHICH FAIL TO SHOW THE EXTENT OF BUSINESS OR PERSONAL USE. EVEN WORSE, WE FREQUENTLY FIND THAT TAXPAYERS SIMPLY KEEP NO RECORDS AT ALL. IN THESE CASES WE ARE FORCED TO DEAL WITH WHAT THE JOINT COMMITTEE ON TAXATION HAS IDENTIFIED AS "AFTER-THE-FACT, OPTIMISTIC ESTIMATES . . . BASED ON INEXACT RECOLLECTION." NOT SURPRISINGLY, SIGNIFICANT COMPLIANCE PROBLEMS CONTINUE.

IN ORDER TO SHOW YOU THE KINDS OF PROBLEMS IRS EMPLOYEES FACE IN THIS AREA ON A DAY-TO-DAY BASIS, WE CONTACTED SEVERAL OF OUR REGIONS FOR THEIR FIRST-HAND EXPERIENCES. THESE RESPONSES ARE INDICATIVE OF THE TYPE OF PROBLEMS THAT ARE TYPICALLY SEEN.

Example 1: DURING 1983-1984, THIS DISTRICT COMPLETED EXAMINATIONS OF 937 EMPLOYEES OF A LARGE CORPORATION. THESE INDIVIDUAL CASES WERE SELECTED BECAUSE THE ISSUE WAS IDENTIFIED DURING THE AUDIT OF THE CORPORATION. MANAGERIAL, ADMINISTRATIVE, AND FIELD EMPLOYEES WERE SUPPLIED AUTOMOBILES BY THE CORPORATION, WHICH ALSO PAID ALL OPERATING EXPENSES FOR THESE VEHICLES. NO EMPLOYEE RECORDKEEPING WAS REQUIRED BY THE CORPORATION REGARDING PERSONAL VERSUS BUSINESS USE OF THE AUTOMOBILES. THE EXAMINATION ISSUE WAS WHETHER TO INCLUDE THE FAIR RENTAL VALUE AND OPERATING EXPENSES FOR THE PERSONAL USE OF THE AUTOMOBILES IN THE GROSS INCOME OF THE EMPLOYEES. AS A RESULT OF THESE EXAMINATIONS THE SERVICE MADE ADJUSTMENTS IN 92.6% OF THE CASES. THE AVERAGE ADJUSTMENT PER RETURN WAS $846 AND THE COMBINED TOTAL OF ADDITIONAL ASSESSMENTS WAS $800,000.

Example 2: ANOTHER IRS DISTRICT HAD SEVERAL LARGE CORPORATE CASES WITH AUTO EXPENSE ISSUES. IN ONE INSTANCE THE

USE OF LUXURY AUTOS BY A COMPANY'S OFFICERS RESULTED IN ADJUSTMENTS OF MORE THAN $240,000. IN ANOTHER INSTANCE THE PERSONAL USE OF AUTOMOBILES BY OFFICERS RESULTED IN AN ADJUSTMENT OF $65,000. THIS DISTRICT HAS AT LEAST ONE ADDITIONAL LARGE CASE CURRENTLY PENDING.

Example 3: THE DISTRICTS IN ONE REGION IDENTIFIED A MINIMUM OF 1,116 CASES IN PROCESS OR RECENTLY CLOSED INVOLVING TAXPAYERS CLAIMING 100% BUSINESS USE OF AUTOMOBILES. THE REGION HAS FOUND THAT, ALMOST WITHOUT EXCEPTION, EXAMINATIONS OF THESE RETURNS RESULT IN ADJUSTMENTS TO THE AMOUNT CLAIMED -- USUALLY THE TAXPAYER HAS INADEQUATE RECORDS OR NO RECORDS AT ALL. SPECIFIC CASES INVOLVING AUTOMOBILE EXPENSES INCLUDE THE FOLLOWING:

- A LARGE CORPORATE EXAMINATION RESULTED IN $35,000 IN ADDITIONAL EMPLOYMENT TAXES FOR THE PERSONAL USE OF CORPORATE AUTOMOBILES BY EXECUTIVES.

- A FAMILY PROFESSIONAL CORPORATION CLAIMED 100% BUSINESS USE OF THREE AUTOMOBILES. OUR EXAMINATION RESULTED IN THE DISALLOWANCE OF DEDUCTIONS FOR ONE AUTOMOBILE AND SUBSTANTIAL REDUCTION IN BUSINESS USE OF THE OTHER TWO. THE TOTAL ADJUSTMENT WAS $16,000.

- A PROFESSIONAL CORPORATION CLAIMED 100% BUSINESS USE OF ITS AUTOMOBILES. OUR EXAMINATION RESULTED IN $4,000 IN ADDITIONAL TAX TO EACH OF THE PROFESSIONALS.

Example 4: A SAMPLING OF CASES FROM ANOTHER REGION INVOLVING AUTOMOBILE EXPENSE ADJUSTMENTS HAD THE FOLLOWING RESULTS:

Amount Claimed on Tax Return	Amount Allowed After Audit	Reason for Adjustment
$ 3.850	- 0 -	No records. Taxpayer would not reconstruct records.
$ 1.652	$1.203	Taxpayer reconstructed records; allowed in part.
$ 2.358	- 0 -	No records. Taxpayer would not provide reconstructed records.
$ 2.100	- 0 -	No records. Taxpayer would not reconstruct records.
$ 2.720	- 0 -	Taxpayer could not show that expenses exceeded reimburse-ment.
$ 2.938	$2.850	Taxpayer had no records, but was able to reconstruct.
$ 3.625	$2.158	No records. Amount allowed based on reconstruction.

$ 1,170	$ 334	NO RECORDS. AMOUNT ALLOWED BASED ON RECONSTRUCTION
$ 3,625	$2,158	NO RECORDS. AMOUNT ALLOWED BASED ON RECONSTRUCTION
$ 1,170	$ 334	NO RECORDS. AMOUNT ALLOWED BASED ON RECONSTRUCTION
$ 4,315	$3,500	NO RECORDS. AMOUNT ALLOWED BASED ON RECONSTRUCTION

CONGRESSIONAL ACTION

IN SECTION 179 OF THE TAX REFORM ACT OF 1984, CONGRESS ADDRESSED THE SUBSTANTIATION PROBLEM DIRECTLY BY AMENDING INTERNAL REVENUE CODE SECTION 274 (D) TO REQUIRE THAT TAXPAYERS MUST SUBSTANTIATE BY "ADEQUATE CONTEMPORANEOUS RECORDS" ANY CREDIT OR DEDUCTION WITH RESPECT TO EXPENSES GOVERNED BY SECTION 274, INCLUDING WHAT THE CODE DEFINES AS "LISTED PROPERTY."4/ "CONTEMPORANEOUS", THE ONLY NEW WORD OF SIGNIFICANCE IN THE LAW, GENERALLY IS TAKEN TO MEAN "OCCURRING OR ORIGINATING DURING THE SAME TIME". AT THE SAME TIME THE NEW REQUIREMENT OF ADEQUATE CONTEMPORANEOUS RECORDS WAS ADDED.

4/ "LISTED PROPERTY" IS DEFINED IN NEW CODE SECTION 280F(D)(4), AND INCLUDES (AMONG OTHER THINGS) PASSENGER AUTOMOBILES AND ANY OTHER PROPERTY USED AS A MEANS OF TRANSPORTATION.

CONGRESS REMOVED FROM THE STATUTE THE TAXPAYER'S ABILITY TO RELY ON THE USE OF "OTHER CORROBORATING EVIDENCE."

ACCORDING TO THE LEGISLATIVE HISTORY OF THE TAX REFORM ACT OF 1984, THIS LEGISLATIVE AMENDMENT WAS INTENDED TO ENSURE THAT SOME TYPE OF RECORD (E.G., LOG, DIARY, JOURNAL) OF THE BUSINESS USE OF LISTED PROPERTY WAS MADE AT OR NEAR THE TIME THE PROPERTY WAS SO USED. FOR EXAMPLE, THE WAYS AND MEANS COMMITTEE'S SUPPLEMENTAL REPORT 98-432, PART 2, STATED THAT "[T]HE COMMITTEE UNDERSTANDS THAT SIGNIFICANT COMPLIANCE PROBLEMS EXIST UNDER CURRENT LAW DUE TO OVERSTATEMENTS OF THE PROPORTION OF BUSINESS USE OF AUTOMOBILES [AND ALSO] . . . BELIEVES THAT AN ADDITIONAL MEASURE SHOULD BE PROVIDED TO ASSIST COMPLIANCE AND ENFORCEMENT IN THIS AREA." FURTHER, THE COMMITTEE STATED ITS INTENTIONS TO "ELEVATE THE STANDARD OF PROOF" IN THOSE INSTANCES IN WHICH A TAXPAYER CLAIMED MORE THAN 50% BUSINESS USE.

THE SENATE FINANCE COMMITTEE'S REPORT 98-169, VOLUME I, NOTED A CONCERN THAT "[M]ANY TAXPAYERS MAY BE ABUSING THE INVESTMENT TAX CREDIT, THE ALLOWANCE FOR DEPRECIATION, AND THE DEDUCTIBILITY OF BUSINESS EXPENSES BY RECHARACTERIZING PERSONAL USE OF ASSETS AS BUSINESS USE." THIS ABUSE, THE COMMITTEE STATED, "UNDERMINE[D] PUBLIC CONFIDENCE IN THE FAIRNESS OF THE TAX LAWS AND IN THE ABILITY OF THE INTERNAL REVENUE SERVICE TO ADEQUATELY ENFORCE THOSE LAWS." THUS, THE COMMITTEE RECOMMENDED THAT ONLY "CONTEMPORANEOUS RECORDS REFLECTING . . . [THE] BUSINESS AND PERSONAL USE OF TANGIBLE PROPERTY . . ." WOULD BE SUFFICIENT TO SUBSTANTIATE DEDUCTIONS OR CREDITS.

THE CONFERENCE COMMITTEE'S REPORT 98-861 CONTAINS PERHAPS THE MOST SUCCINCT STATEMENT OF CONGRESS' INTENT IN THIS AREA. THE CONFEREES ADOPTED THE RULE THAT TAXPAYERS ARE REQUIRED TO SUBSTANTIATE THE BUSINESS USE OF "LISTED PROPERTY" BY ADEQUATE

CONTEMPORANEOUS RECORDS. THE CONFEREES EXPECTED THAT THOSE RECORDS WOULD "REFLECT WITH SUBSTANTIAL ACCURACY THE BUSINESS USE OF THE PROPERTY." THOSE RECORDS, THE CONFEREES EXPLAINED, MUST INDICATE "THE BUSINESS PURPOSE OF THE EXPENSE OR USE, UNLESS . . . [THAT] PURPOSE IS CLEAR FROM THE SURROUNDING CIRCUMSTANCES." THEY ALSO NOTED THAT WITH RESPECT TO AUTOMOBILES, "LOGS RECORDING THE DATE OF THE TRIP AND THE MILEAGE DRIVEN FOR BUSINESS PURPOSES MUST BE KEPT."

FINALLY, THE GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1984 PREPARED BY THE STAFF OF THE JOINT COMMITTEE ON TAXATION (JCS-41-84) AND RELEASED AFTER PUBLICATION OF THE REGULATIONS ISSUED IN OCTOBER ECHOES THE REQUIREMENTS NOTED IN THE CONFERENCE COMMITTEE'S REPORT ESPECIALLY WITH RESPECT TO THE CONGRESSIONAL INTENT IN PASSING THE CURRENT RECORDKEEPING REQUIREMENTS. THE COMMITTEE STAFF INDICATED CONGRESS' CONCERN THAT "SIGNIFICANT NONCOMPLIANCE UNDER PRIOR LAW . . . [RESULTED] FROM THE OVERSTATEMENT OF DEDUCTIONS AND CREDITS RELATED TO THE BUSINESS USE OF AUTOMOBILES AND OTHER PROPERTY THAT TYPICALLY IS USED FOR PERSONAL PURPOSES." THE JOINT COMMITTEE REPORT STATED THE PROBLEM WITH "AFTER-THE-FACT OPTIMISTIC ESTIMATES OF . . . [BUSINESS] USE BASED ON INEXACT RECOLLECTION" PROMPTED THE CONGRESS TO CHANGE THE LAW BECAUSE THE "REQUIREMENT OF PRIOR LAW THAT ADEQUATE RECORDS BE KEPT WAS NOT OBSERVED UNIFORMLY." FOR THOSE REASONS, THE STAFF NOTED, "CONGRESS BELIEVED THAT IT . . . [WAS] APPROPRIATE TO REQUIRE THAT CONTEMPORANEOUS RECORDS MUST BE KEPT AS A CONDITION OF CLAIMING DEDUCTIONS WITH RESPECT TO THIS PROPERTY."

SERVICE EFFORTS TO ADMINISTER THE LAW

ONE OF THE KEY STEPS IN THE PROCESS OF IMPLEMENTING ANY NEW TAX LAW IS THE ISSUANCE OF REGULATIONS. IN THIS CASE, THE

IRS' TEMPORARY AND PROPOSED REGULATIONS ON SUBSTANTIATION THROUGH "ADEQUATE CONTEMPORANEOUS RECORDS" APPEARED IN THE FEDERAL REGISTER OF OCTOBER 24, 1984. GENERALLY, THOSE REGULATIONS ---

- DEFINED THE TERM "ADEQUATE CONTEMPORANEOUS RECORD" AS A LOG, JOURNAL, DIARY OR OTHER SIMILAR RECORD.
- PROVIDED THAT SEPARATE ENTRIES FOR EACH USE MUST INDICATE THE NAME OF THE USER, THE DATE OF THE USE, THE PURPOSE OF THE USE, AND THE MILES DRIVEN OR TIME EXPENDED.
- NOTED THAT LOG ENTRIES WERE ONLY REQUIRED FOR THE BUSINESS USE OF THE PROPERTY WHEN THE PERSONAL USE MAY BE DETERMINED WITHOUT THE NECESSITY FOR A SEPARATE ENTRY. FOR EXAMPLE, AN AUTOMOBILE'S OVERALL USE CAN BE DETERMINED FROM ODOMETER READINGS AT THE BEGINNING AND END OF EACH TAXABLE YEAR. THUS, A TAXPAYER'S RECORD OF ONLY BUSINESS USE WOULD SUFFICE. IN ALL OTHER CASES, ENTRIES FOR EACH USE MUST BE MADE.
- STATED THAT THESE LOG ENTRIES MUST BE MADE AT OR NEAR THE TIME THE PROPERTY IS USED.
- PROVIDED THAT CERTAIN PROPERTY USED AS A MEANS OF TRANSPORTATION IS NOT "LISTED PROPERTY," AND THUS NOT SUBJECT TO THE REQUIREMENT TO KEEP ADEQUATE CONTEMPORANEOUS RECORDS, BECAUSE IT IS ORDINARILY NOT SUSCEPTIBLE TO PERSONAL USE. EXAMPLES OF THIS PROPERTY INCLUDE FORKLIFTS, CEMENT MIXERS, AND TRUCKS DESIGNED FOR SPECIFIC BUSINESS PURPOSES, SUCH AS A REFRIGERATED DELIVERY TRUCK.

ON FEBRUARY 20, 1985, THE SERVICE SUPPLEMENTED THE OCTOBER 24 REGULATIONS BY THE PUBLICATION OF REVISED TEMPORARY AND PROPOSED REGULATIONS. GENERALLY, THE REGULATIONS AS

SUPPLEMENTED PERMIT TAXPAYERS TO SATISFY THE RECORDKEEPING REQUIREMENTS BY SINGLE ENTRIES FOR ROUND TRIPS AND PERIODS OF UNINTERRUPTED BUSINESS USE. FOR EXAMPLE, A PERSON MAKING A SERIES OF DELIVERIES AT DIFFERENT LOCATIONS WHICH BEGINS AND ENDS AT THE BUSINESS PREMISES AND WHICH MAY INCLUDE A STOP AT THE BUSINESS PREMISES IN BETWEEN TWO DELIVERIES, MAY ACCOUNT FOR THESE ACTIVITIES WITH A SINGLE ENTRY IN A LOG OR OTHER RECORD. LIKEWISE, A SALESPERSON AWAY FROM HOME FOR SEVERAL DAYS ON A BUSINESS TRIP MAY MAKE A SINGLE ENTRY IN A LOG FOR THE ENTIRE TRIP. DE MINIMIS PERSONAL USE, SUCH AS A STOP FOR LUNCH ON THE WAY BETWEEN TWO BUSINESS STOPS, IS NOT CONSIDERED AN INTERRUPTION IN BUSINESS USE. ALSO, IN THE CASE OF EMPLOYER-PROVIDED AUTOMOBILES, THE REGULATIONS PERMIT THE EMPLOYER TO RELY ON THE EMPLOYEE'S SUMMARY STATEMENT IF THAT STATEMENT IS BASED ON "ADEQUATE CONTEMPORANEOUS RECORDS".

THE REGULATIONS ALSO PROVIDE THE FOLLOWING FOUR SPECIAL RULES WHEN THE RECORDKEEPING REQUIREMENT WILL BE ELIMINATED OR SUBSTANTIALLY REDUCED:

1. FARM VEHICLES. IF A TAXPAYER'S GROSS INCOME FROM THE BUSINESS OF FARMING EXCEEDS 70 PERCENT OF THE TAXPAYER'S GROSS INCOME FROM ALL SOURCES (EXCLUDING PASSIVE INVESTMENT INCOME), TWO METHODS OF RECORDKEEPING ARE AVAILABLE WITH RESPECT TO VEHICLES THAT ARE REGULARLY USED DIRECTLY IN CONNECTION WITH THE BUSINESS OF FARMING. THE FIRST OPTION IS THAT THE TAXPAYER MAY KEEP RECORDS OF THE PERSONAL USE OF A VEHICLE. ALTERNATIVELY, IF THE VEHICLE IS DESIGNED PRIMARILY FOR COMMERCIAL USE (SUCH AS A TRUCK) THE TAXPAYER MAY TREAT 80 PERCENT OF THE USE AS BUSINESS USE AND 20 PERCENT AS PERSONAL USE. WITH RESPECT TO ANY OTHER VEHICLE (SUCH AS AN AUTOMOBILE) THE TAXPAYER MAY TREAT 70 PERCENT AS BUSINESS USE AND 30 PERCENT AS PERSONAL USE. IT SHOULD BE NOTED, HOWEVER, THAT ADEQUATE CONTEMPORANEOUS RECORDS NEED NOT BE KEPT FOR

SPECIAL-PURPOSE FARM VEHICLES, SUCH AS TRACTORS AND COMBINES, SINCE THOSE VEHICLES ARE ORDINARILY NOT SUSCEPTIBLE TO PERSONAL USE.

2. No personal use. EMPLOYERS (INCLUDING SOLE PROPRIETORSHIPS AND PARTNERSHIPS) WHO USE VEHICLES IN A TRADE OR BUSINESS NEED NOT KEEP LOGS IF THE VEHICLES ARE OWNED OR LEASED BY THE EMPLOYER AND MADE AVAILABLE FOR USE BY ONE OR MORE EMPLOYEES FOR BUSINESS PURPOSES. WHEN NOT USED IN THE EMPLOYER'S BUSINESS, THE VEHICLES MUST GENERALLY BE KEPT ON THE EMPLOYER'S BUSINESS PREMISES. ALSO, THE EMPLOYER MUST HAVE A POLICY AGAINST USE OF THE VEHICLES FOR PERSONAL PURPOSES (OTHER THAN *DE MINIMIS* PERSONAL USE, SUCH AS A STOP FOR LUNCH).

3. Commuting. EMPLOYERS (INCLUDING SOLE PROPRIETORSHIPS AND PARTNERSHIPS) WHO FOR BUSINESS REASONS REQUIRE EMPLOYEES TO USE BUSINESS VEHICLES FOR COMMUTING ARE GENERALLY NOT SUBJECT TO THE RECORDKEEPING REQUIREMENT SO LONG AS THE ONLY PERSONAL USE OF THE VEHICLES IS FOR COMMUTING (OTHER THAN *DE MINIMIS* PERSONAL USE SUCH AS A STOP FOR LUNCH OR A STOP FOR A PERSONAL ERRAND ON THE WAY HOME), SUCH USE IS NOT BY AN OFFICER OR ONE-PERCENT OWNER OF THE EMPLOYER, AND AMOUNTS ARE INCLUDED IN EMPLOYEES' INCOME TO REFLECT THE USE OF VEHICLES FOR COMMUTING.

4. Sales and service. TAXPAYERS WHO SPEND MOST OF A NORMAL BUSINESS DAY USING A VEHICLE TO MAKE SEVERAL STOPS IN CONNECTION WITH THE EMPLOYER'S BUSINESS, FOR EXAMPLE, TO CALL ON CUSTOMERS OR CLIENTS, TO MAKE DELIVERIES, OR TO VISIT JOB SITES, MAY SATISFY THE RECORDKEEPING REQUIREMENT IN ONE OF TWO WAYS. FIRST, THEY MAY KEEP RECORDS OF THE PERSONAL USE OF A VEHICLE. ALTERNATIVELY, IF THE VEHICLE IS AN AUTOMOBILE (OR OTHERWISE DESIGNED PRIMARILY FOR PERSONAL USE) THE TAXPAYER MAY TREAT 70% OF THE USE AS BUSINESS USE AND 30% AS PERSONAL USE.

IF THE VEHICLE IS DESIGNED PRIMARILY FOR COMMERCIAL USE, THE TAXPAYER MAY TREAT 80% OF THE USE AS BUSINESS USE AND 20% AS PERSONAL USE. HOWEVER, THESE RULES ARE NOT AVAILABLE TO TAXPAYERS WHO CUSTOMARILY SPEND MOST OF A NORMAL BUSINESS DAY IN AN OFFICE OR SIMILAR SETTING.

Comments and the Regulatory Process

WE ALWAYS INVITE TAXPAYERS TO PROVIDE THE SERVICE WITH WRITTEN COMMENTS ON PROPOSED REGULATIONS. THE INFORMATION PROVIDED BY THE COMMENT PROCESS GENERALLY ENABLES US TO IMPROVE AND REFINE REGULATIONS BEFORE THEY BECOME FINAL. IN THIS INSTANCE, OUR NORMAL PROCEDURES OF PUBLISHING PROPOSED REGULATIONS AND RECEIVING COMMENTS PRIOR TO ISSUANCE OF FINAL REGULATIONS WAS NOT FOLLOWED BECAUSE OF THE NEED FOR IMMEDIATE GUIDANCE TO TAXPAYERS. AS A RESULT, THE REGULATIONS AT ISSUE ARE IN BOTH PROPOSED AND TEMPORARY FORM. WE URGE THE PUBLIC TO PROVIDE US WITH COMMENTS BY APRIL 8, 1985. IN ADDITION, A PUBLIC HEARING ON THESE REGULATIONS HAS BEEN SCHEDULED FOR APRIL 16, 17, AND 18.

Conclusion

MR. CHAIRMAN, TODAY I HAVE ATTEMPTED TO DEMONSTRATE THAT THE SERVICE'S INITIAL TEMPORARY AND PROPOSED REGULATIONS REQUIRING SUBSTANTIATION OF A DEDUCTION OR CREDIT BY "ADEQUATE CONTEMPORANEOUS RECORDS" WERE AN ACCURATE INTERPRETATION OF THE LAW AND OF THE CONGRESSIONAL INTENT. WE BELIEVE THAT A FAIR READING OF THE LEGISLATIVE HISTORY AND THE JOINT COMMITTEE EXPLANATION CONFIRMS OUR JUDGEMENT.

AS YOU AND OTHER MEMBERS OF THE SENATE DEBATE THIS ISSUE, I WOULD HOPE THAT YOU KEEP THE FUNDAMENTALS OF GOOD TAX ADMINISTRATION CLEARLY IN MIND. AS YOU ARE AWARE, THE INCOME

TAX SYSTEM IN THIS COUNTRY IS BASED ON VOLUNTARY SELF-ASSESSMENT. WE DEPEND ON TAXPAYERS TO HONESTLY AND ACCURATELY ASSESS THEIR TAX LIABILITIES AND, FOR THE MOST PART, TAXPAYERS JUSTIFY THE FAITH THAT WE PLACE IN THEM.

IF WE EXPECT TAXPAYERS TO CONTINUE TO WARRANT OUR FAITH, WE MUST ENDEAVOR TO ASSURE THEM THAT THE SYSTEM WORKS AND THE SYSTEM IS FAIR. IF TAXPAYERS LOSE THEIR RESPECT FOR THE SYSTEM WE CAN EXPECT SERIOUS CONSEQUENCES IN THE AREA OF VOLUNTARY COMPLIANCE.

THE ISSUE OF PERSONAL USE OF BUSINESS PROPERTY HAS NEVER BEEN ONE OF PURE TAX REVENUES. INSTEAD, IT IS AN ISSUE THAT IS DRIVEN BY QUESTIONS OF FAIRNESS. THE AVERAGE TAXPAYER SEES THE LAWYER, DOCTOR, OR ACCOUNTANT (AND I AM A MEMBER OF TWO OF THOSE PROFESSIONS) DRIVE TO THE KENNEDY CENTER IN A LUXURY AUTOMOBILE PAID FOR WITH TAX DEDUCTIBLE DOLLARS. TO THE EXTENT THAT OUR SUBSTANTIATION RULES PERMIT HIGHLY VISIBLE ABUSIVE CASES TO EXIST, WE WILL SEE THE CONSEQUENCES.

WHILE I RECOGNIZE THE BURDENS ASSOCIATED WITH RECORDKEEPING, I SEE NO REALISTIC ALTERNATIVE TO THE MAINTENANCE OF RECORDS. RECORDS NOT ONLY ENABLE THE TAX ADMINISTRATOR TO PERFORM ITS FUNCTION, BUT ALSO ASSURE THAT TAXPAYERS WILL RECEIVE THE FULL AMOUNT OF TAX BENEFITS TO WHICH THEY ARE ENTITLED.

MY ASSOCIATES AND I WILL BE PLEASED TO TRY TO ANSWER ANY QUESTIONS YOU OR THE OTHER MEMBERS MAY HAVE.

Senator ABDNOR. Thank you, Commissioner.

Did I understand Senator Heinz to say that this all happened after this went to conference committee?

Mr. EGGER. There is a rather long history of it, but in the decision to require the records, as I recall, on the Senate side, one solution was to require that tax return preparers certify that the records existed. And somehow or other the return preparers didn't think much of that idea, so then that version was changed, and the conference report did adopt one of the provisions put forward here in the Senate, which was to require contemporaneous records.

Let me just refer you again to section 274(d). Back in the 1960's, there was a hue and cry about people living on an expense account, and over-deducting the travel and entertainment expenses. So, section 274(d) came into the law at that time, and one of the features of that was to require that adequate records be kept.

Now, at that time the adequate records could be, in fact, supplanted by other evidence that the taxpayer might put forward to support his own statement.

This goes a bit beyond that, and, unfortunately, 274(d) does not apply to local travel—only to travel away from home.

Senator ABDNOR. Well, Mr. Egger, I think people are basically pretty honest but to fulfill the requirements of the regulations is almost a full-time job. Maybe it is because my people are irritable right now, the farmers are having an awful time. I guess this is their busiest time. Keeping up with the regulations we try to throw at them, and having this come along now, which is not only a nuisance, but I think a hindrance, is too much. About the time I am trying to defend myself, there was an article in the paper that said there are 200,000 people in this country who made over $200,000 who didn't pay a nickel's income tax.

We have a lot of people in this country making more dollars through unemployment compensation than are people who are working full-time in my part of the country.

I am not cut out to do it. I travel miles when I am home in my State. I have an awful time keeping some account of where I am going. Then I see that one of the biggest defense contractors in this country was paid $6, $7 billion and paid no income tax. That is a hard thing to explain to a lot of little guys back home. I am going to try to be accountable.

I tried to reason with Secretary Perlman, who was very decent to talk to. He went out of his way to meet with me every time, but I think there is a better way. I think people are basically honest.

I think you could require these people to list every vehicle they have. I keep understanding it is not the little guy we are trying to get. There has to be a better way. There are a lot of funds or dollars to be recovered.

How much do you think we will pick up by all of this? This is a requirement that goes into effect for a full year. What could it mean to the Treasury?

Mr. EGGER. I don't know. Yesterday, Mr. Pearlman suggested that perhaps the difference between these regulations and what the law was before was something over $100 million a year. But I mean to say, Mr. Chairman, that I think we need to look hard at this. I think we need to examine it very carefully, and do everything we can, but I think it is not helpful to overstate the case.

In the case of the farmer who operates his own pickup truck, for example, and occasionally drives into town on a personal mission, he needs to make maybe two or three entries a year. This is the rule as currently modified, and we are happy to look even beyond that.

And the same thing with the florist who uses the station wagon to deliver all day long. We are not talking about them under the rules as they are modified——

Senator ABDNOR. How will you handle the businessman who stops by home before he leaves for somewhere else? There are rules here for every kind of occupation and profession. How do they figure these things out?

Mr. EGGER. You have just put your finger on the biggest problem here. You are trying to deal with such a massive amount of divergence of activity, that when you try to write a simple rule, and then apply it across the board, it typically doesn't work. So that's why the things have to be responsive as much as possible to many different situations.

Senator ABDNOR. I suggested to Secretary Pearlman on two occasions that I think people are basically honest; that if they had a form and had to list every vehicle either personally or through business, or whatever, even with a corporation they would do it. If that's who we are trying to get, devise a program for that. I bet you would get a much more honest accounting than you ever would get out of this.

He admitted to me that if someone wanted to rig this thing they could do it. You would have an awful time trying to prove this wrong. I think if he was asked to list his vehicles to the best of his estimate, how much he listed for business, and if he had three cars in his family, and he had tried to list 75 percent for business for all three, any examiner would look at that, and I am saying if this is what we are trying to get at, I think people would cooperate.

It is kind of like, you know, we will show them, and I think this is egging them on, and I don't think you are going to get that much accuracy.

I guess farmers only have to do this once a day. We were talking about how cumbersome it is. If they are going to be absolutely honest, they had better have a good head to remember all of this, and total it up at the end of the day to be accurate.

I think you could get just as good an estimate by letting them tell you how much they use it in a day.

Mr. EGGER. I think there are other ways to do it, Mr. Chairman, but typically we are constrained by the committee report which explains what it was the Congress sought to accomplish.

If left strictly on our own, I am satisfied that we can come up with recommendations that will be a lot more acceptable than these, but I think it is wrong to throw the baby out with the bath water, and to just have no rules.

Senator DECONCINI. Mr. Chairman, would you yield?

That also seems to be what we are confronted with, as to what Congress wants.

Mr. Egger, what this member wants is to use some common sense and I think you have it. I am not sure everybody at Treasury does, or at IRS, but the chairman's point is well taken.

You have just got to use some common sense, and don't expect people to itemize every stop they make during the day. And it seems to me that you use us as the scapegoat, or perhaps we use you, or you are so intimidated by Congress, you are so concerned about being criticized because someone is not scrutinized well enough, but I just ask people like yourself to use some common sense.

You have been in business. You know people in business. All you have to do is ask a painting contractor or somebody who has a fleet of cars or trucks, you know, how do you account for this? And I could do it. I would be glad to do it, but that's not my job. That is the job of our regulators, and when they do this stuff, overkill like this, and they say, "Well, Congress voted in here to be strict and tough."

Well, they want us to be fair, and that is our business, and I tell you, I don't buy it that it is our fault. It is only our fault because we are dumb enough to vote for it, to put it in there at all, but we expect the executive branch to exercise some common sense.

I just have questions for the record.

Senator ABDNOR. I just want to say, obviously that the committee report probably said a lot more than any of us have done. It will be interesting to take a poll of members of that committee and see what the intent really was.

But I will say this. You have come a long way from the first day these regulations came into effect compared to what we are talking about now. It is far more difficult for the businessman. I see all kinds of problems for this.

If we were thinking about this in the proper perspective, it shouldn't have taken us long, those of us who drew up the original rules, to have realized, that's going way too far. It is impossible to sell this to the Nation now, after encountering what they have encountered.

The businessman who has an automobile may spend only 40 percent of the time in that car, but it certainly is used 85 percent for business. Is that enough to qualify using it mostly for business? You got some regulation on how a businessman can use for 70 percent.

How much time does he have to spend in that car?

Mr. EGGER. What we have done is to outline categories of use, where we have said the automobile is used essentially for business, that's to say that the individual's occupation is such that he is out on the street or on the road.

Senator ABDNOR. What if he is only out 40 percent of the time, if that's what that—he only puts 70,000 miles a year on it? You can buy these cars at the end of the year with less than 5,000 miles, used for business in taking people around, and some businessmen have that sort of situation.

Is he eligible for at least taking 70 percent, even though——

Mr. EGGER. No; that circumstance won't come within our—it would have to be some record of business and personal use.

Senator ABDNOR. About 2 weeks ago the Treasury Secretary Baker came before the Appropriations Committee, and I asked him about the vehicle log matter. He indicated that the regulations were published in response to Congress, including the word contemporaneous.

I asked him if he would ~~object if~~ Congress admitted that contemporaneous was an ill-advised choice, and simply deleted it.

His response was, so long as we didn't throw the door open to widespread tax evasion, he would have no problem with that.

Now, how do you feel about it?

Mr. EGGER. I don't have any problem with that. As I said, Assistant Secretary Pearlman—and I yesterday agreed to work with the tax committees in Congress to make sure that nobody is concerned with our going afield from the import of the language in the committee report. Keep in mind that that's a legal problem for us. That is not just one of practicality. That is a legal problem.

If we have to go to court on the issue, we would be met with that kind of language. But my point is that he and I both believe that if we don't have to emphasize that language too strongly, that we can write rules that are less onerous and less burdensome.

Senator ABDNOR. Thank you. I have other questions for the record.

Senator Mattingly.

Senator MATTINGLY. You made some comment earlier that the changes that you made were made because perhaps you had gone too far in certain areas, I think that's what you said; is that right?

Mr. EGGER. Yes.

Senator MATTINGLY. I think everybody agrees now that the intended will of the Congress was what they passed.

What we are bordering on now is 10 percent withholding, where we are penalizing everyone for the sins of the few, and as in 10 percent withholding, this is probably going to go the same way, in some type of repeal, because what we are trying to do, I think this sort of typifies Government at its worse with regard to what we have done here.

Mr. EGGER. Well, Senator Mattingly, I think of it as an evil or ill, whatever, that grows out of the way tax legislation gets put together these days. And rather unfortunately, we don't have either the luxury or the time to think through each of these things as they go into the law.

We are one of the few countries in the world where the tax administrator isn't involved in looking at provision of legislation from the standpoint of practicality or from the standpoint of enforcement, and so on, and I think that is where part of the problem is.

I am not up here to tell you that it is not my fault, it is your fault, that's ridiculous. The point is that the language that went in here gave us the signal that apparently it was overkill.

Senator MATTINGLY. I think you made a comment that you were constrained by what the committee said, which is a legal problem, and I am here to help you, Mr. Egger—that when people say, I am from the IRS, I am here to help you. I am from the Senate, and I am here to help you.

If S. 260 doesn't pass right away, which it probably won't right away, then what I intend to do is help you by offering my amendment on the supplemental appropriations bill which will be coming up, which will forbid the IRS to enforce those new regulations, which, I assure you, stops it dead in its tracks, as I said before, and I assume you would welcome that change.

Mr. EGGER. I have to tell you that in my judgment that's not the way to write tax laws; but if that's the will of the Senate and the Congress, obviously, we would have to live with it.

Senator MATTINGLY. I think that knowing—this will be my fifth year, of trying to figure out how to change laws, the best way I have found so far, is to take the money away, and you will be amazed at what happens. Change comes about immediately.

Mr. EGGER. I honestly believe that given the opportunity to work with the tax committees on this particular problem, we can find a better solution than we had. And to do that, and Assistant Secretary Pearlman agrees, we will be working with those committees. I urge you strongly to at least let us get through that hurdle before you take any other actions.

Senator MATTINGLY. The problem I see is that we have got—the population of the United States is out there not knowing whether to keep records or not, and they are keeping records, because they have no idea as to what the IRS is going to do, and they don't look at the IRS and Senate seprately, But say the Government, the Government is going to put in an amendment on the appropriations bill to stop that, and that way, they will be relieved of having to keep those records, and that will be, hopefully, the force of law that will be enacted prior to either Senator Abdnor's bill taking effect, or Senator Heinz's bill taking effect. And I think that is the fairest and easiest way, and instead of taking that shotgun and let fly, I am going to take a fly swatter to that fly and get it.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you, Senator.

Commissioner Egger, I want to take note that today I received a note from the Assistant Secretary for Tax Policy, from Ronald Pearlman, dated March 4, 1985, stating that the Treasury Department will continue to review these regulations and is willing to work with me to do the right thing.

I would like to ask unanimous consent of the committee that this letter be made a part of the record.

[CLERK'S NOTE.—The information is being retained in the subcommittee files.]

ADDITIONAL COMMITTEE QUESTIONS

Senator ABDNOR. Commissioner, I know you have to go, but I have some very interesting witnesses coming up. I hope somebody from the Department will be in a position to stick around, and hear some of the testimony.

Mr. EGGER. We will have someone here, Mr. Chairman.

Senator ABDNOR. Good. I thank you very, very much for attending. I really do. I know this is a very controversial subject, and we probably will have many more hearings coming up. Thank you.

Mr. EGGER. Part of the job. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

ADDITIONAL COMMITTEE QUESTIONS

SENATOR ABDNOR: The results of a TCMP audit have given much data do you assume that once a taxpayer has been audited and adjustment due to an overstatement has been made, does he then continue to overstate deductions?

MR. EGGER: Evidence suggests that an audit serves to increase compliance. The effect, we believe, issues from the enforcement and educational aspects of a comprehensive examination. This finding is based primarily on the TCMP panel studies, whereby about 6,000 taxpayers were randomly selected for TCMP examinations in 1969 and again examined in 1971 or 1973. It should be stressed that only 50,000 taxpayers every three years are subject to a TCMP examination. Further in fiscal year 1984, less than 1.3 percent of individual income tax returns were examined. Therefore, the potential improved future compliance resulting from an examination is limited to a small portion of taxpayers.

SENATOR ABDNOR: Do you have any information that compliance has become better or worse since 1981 because of all the various changes in the tax laws?

MR. EGGER: The latest available data from TCMP is for tax year 1979. A survey of 1982 tax returns is currently underway and results from this study should be available by the end of 1985. Our research indicates that compliance with the tax laws has been on a downward trend since the 1960's. However, the decline in compliance does seem to be slowing. The decline in compliance comes from a number of factors and we are unable to associate tax law changes with a specific portion of that decline. These data will provide another point of measurement of car and truck expenses and employee business expenses.

SENATOR ABDNOR: Does a pickup used by a construction company qualify as "a vehicle designed primarily for commercial use?"

MR. EGGER: Yes, generally when a pickup truck is used by a construction company it qualifies as a vehicle designed primarily for commercial purposes.

SENATOR ABDNOR: What if you hang a gun rack in that pickup, is it then "specifically equipped or modified for personal purposes?" Does whether you can come under the 80% or the 70% safe harbor depend on such a factor?

MR. EGGER: No, a gun rack does not change the status of a pickup to a vehicle "specially equipped or modified for personal purposes," and is not a factor in determining whether the applicable allocations of business and personal use is 80% and 20%, respectively, or 70% and 30%, respectively.

SENATOR ABDNOR: What constitutes "uninterrupted business use" for purposes of the single entry rule? What of the contractor who is using his pickup at the worksite. Assume he takes it to the local lumber yard for supplies and drives from one site to another during

the day, but then he also takes his construction crew down to the local cafe for a coffee break mid-morning and again in the afternoon. Is this personal use, and if so, does each coffee break require a separate entry?

MR. EGGER: Uninterrupted business use of a vehicle is continuous use in connection with a trade or business. De minimis personal use, such a stop for lunch on the way between two business stops, is not an interruption of business use. Commuting and other personal use that is more than de minimis are interruptions of business use. Use by a contractor of his own pickup to transport employees from a construction site to a place where they may obtain meals is not an interruption of business use.

In the case of vehicles, the general recordkeeping rules of § 1.274-5T require a record of total use of a vehicle during a taxable year and a separate entry with respect to each period of uninterrupted business use. If a taxpayer is eligible to use one of the safe harbors of § 1.274-6T, for example, in the case of a pickup used in connection with farming or used by a contractor to visit different construction sites, the taxpayer has two choices. The taxpayer may use the safe harbor allocation of 80% business use and 20% personal use, or the taxpayer may record total use and periods of personal use.

SENATOR ABDNOR: How about the small furniture store owner who drives his truck six blocks to work in the morning, uses it for several deliveries during the day, and drives to the local drive-in come evening or to see the local football team play on Friday night, what sort of records must he keep? Would he qualify for the 70% safe harbor provision, or is he not "using a vehicle during most of his normal business day?"

I assume he can use the single entry for all of his deliveries during the day, but is there anything else the revised regulations do to ease his paperwork? Must he keep track of all of his use, or just his business or just his personal use?

Just where do the revised regulations leave the typical small mainstreet businessman--the type of guy who's the lifeblood of small town life in my state? must they continue to keep detailed logs as under the original regulations?

MR. EGGER: Travel between a person's residence and principal place of business is commuting, regardless of the distance traveled, and therefore constitutes personal use of a vehicle. Travel between a person's principal place of business and a stop where the person engages in activities unrelated to his trade or business is also personal use of vehicle which is more than de minimis personal use. Under the general recordkeeping rules, that person would need a record of total annual mileage and a record of the day's uninterrupted business use that would contain the following information:

(a) The date,
(b) The name of the driver, unless he is the one person who regularly uses the truck,
(c) Either the odometer readings at the beginning and end of the period of business use of the number of miles driven during that period, and
(d) A statement of the business purpose for using the truck, for example, to make deliveries.

Whether the store owner qualifies for the safe harbor allocation of business and personal use cannot be determined from how he uses a truck on only one business day. Clearly, if the truck is used each business day to make deliveries and only for personal purposes on evenings or weekends, the safe harbor may be used. In the case of other businessmen, whether the general recordkeeping rules apply or whether a safe harbor may be used depends upon the nature of the business use of any vehicle.

SENATOR ABDNOR: The original regulations, as I understand, were published October 24, 1984, is that correct? And they were about 15-16 pages in the FEDERAL REGISTER, and are still in effect except for where they have been specifically superceded, correct? Now as I understand, the revised regulations were published on February 20 and ran about 10 pages. It is also my understanding that the way one accounts for "imputed income" arising from commuting also impacts on what options you may use to satisfy the "contemporaneous recordkeeping requirements. The initial fringe benefit commuting regulations were, I believe, published January 7 and consumed many pages. My point is that here we have many pages of fine, legal print scattered here and there throughout the FEDERAL REGISTER which millions of ordinary Americans are going to be responsible to know and comprehend in order to claim their legitimate business deductions for using a vehicle. Now, I don't know what this sounds like to you, but to me it sounds like a paperwork monster has been created---the kind of monster that South Dakotans elected me to fight. I can't quite understand why, when the emphasis supposedly is on tax simplification, why something so complicated has to be created.

MR. EGGER: Although the temporary regulations that were published in the Federal Register on October 24, 1984 ran 15 pages in length, the actual text of the recordkeeping regulations under section 274 (d) covered less than half of one page in the Federal Register. (The remainder of the document contained temporary regulations under new Code section 280F and an explanation of the new regulatory provisions). Those temporary regulations relating to recordkeeping, as amended and supplemented by the publication of February 20, 1985, are effective for taxable years beginning after December 31, 1984. For most individuals, the regulations took effect on January 1, 1985. For those taxpayers that use a taxable year other than the calendar year (i.e., a fiscal year), the regulations take effect on the first day of their first fiscal year beginning after December 31, 1984.

The fringe benefit regulations that were published on January 7, 1985, provide rules for determining the value of an employer-provided automobile (or other vehicle), and hence an amount to be included in an employee's income reflecting that fringe benefit. If the only personal use of an employer-provided automobile is for commuting (other than de minimis personal use), a special rule may be used to value that commuting use in order to determine the proper amount of an employees income. That special rule must be used to value commuting use in order to use the safe harbor for substantiating the business use of vehicle when the only personal use is for commuting.

It is extremely unusual for temporary regulations to be issued and then amended within four months after their publication. When temporary regulations relating to two interconnected areas of tax law are published in separate documents and amended by a third, the rules will undoubtedly seem more complex than is necessary. Most practitioners who regularly work with the Internal Revenue Code and regulations have access to commercial services that are continually updated as Congress amends the law or the Treasury Department amends the regulations. In these services, the regulations will read from beginning to end with all amendments incorporated and without the technical language required for publication in the Federal Register. For those individual taxpayers and small businessmen who prepare their own returns, the Service makes available each year free of charge publications that are written in layman's terms and that explain what taxpayers must do in order to comply with the tax law. In addition, important tax law changes were noted in the instructions for preparing 1984 returns. Taxpayers were advised that adequate contemporaneous records would be required beginning in 1985 to document certain trade or business expenses. Two publications were listed that taxpayers could obtain for more details.

SENATOR ABDNOR: Commissioner, many churches provide parsonages and cars for their ministers and it seems to me this presents some very special problems. First, would you agree that where the minister's car is parked at the parsonage, which is adjacent to the church, there is no commuting? Second, how does IRS propose to protect the minister-penitent privilege if a minister is supposed to log all the "business" trips he takes on his daily rounds? Third, how is a minister to know when a personal trip to the supermarket becomes a business trip if he is stopped by congregants or others who seek his spiritual guidance outside the walls of the church or parsonage?

MR. EGGER: As explained in a previous answer, travel between a person's residence and place of business is commuting, regardless of the distance traveled. Of course, travel between two business locations, for example, between the church and a hospital to visit sick parishioners, is business use of a vehicle. No information is required by the temporary regulations that would intrude upon the confidential minister-penitent relationship. For

example, a minister may record his business purpose as "to hear confession" without revealing the content of that confession. In addition, it must be remembered that temporary regulations were issued to provide taxpayers with preliminary guidance, not to address all issues. Section 1.274-5 (c) (2) (ii) (c) of the regulations under section 274 (d), which were adopted in 1962, expressly provides that information of a confidential nature need not be set forth in the taxpayer's diary or similar record. That policy has not been affected by any amendment to section 274 (d) by the Tax Reform Act of 1984.

Finally, it is always difficult to issue regulations that will cover all situations of all taxpayers. That is why written comments that taxpayers provide to the Service are so helpful in improving and refining regulations before they become final. In the notice of rulemaking that accompanied the temporary regulations (50 FR 7071, February 20, 1985) the Service invited comments on allocating use of property between business and personal purposes. It is hoped that final regulations will address the issue of deciding what is business use and what is personal use in more detail.

QUESTIONS SUBMITTED BY SENATOR DENNIS DECONCINI

SENATOR DECONCINI: None of us in the Senate sanction tax cheaters. The business people I talk to in Arizona don't sanction tax cheaters. They tell me that they are willing to pay their fair share of the taxes. They also tell me that they know the deficit must be reduced. A number of business people in Arizona even tell me that they are willing to pay more in taxes in order to help reduce the deficit. What they also tell me is that they are willing to put more time and effort into paperwork than they do into running their business. I've got to believe that there is a better mousetrap, and that there is a better way of catching the tax abusers. What alternatives can you offer this subcommittee?

MR. EGGER: Before its amendment by the Tax Reform Act of 1984, Code section 274 (d) disallowed deductions for (1) expenses incurred while traveling away from home, (2) for expenses with respect to entertainment, recreation, or amusement, and (3) for expenses for gifts unless sustantiated by adequate records or by sufficient evidence corroborating a taxpayer's own statement. Regulations implementing section 274 (d) were first adopted in 1962. Under these regulations, expenses are required to be substantiated by maintaining an account book, diary, statement of expenses, or similar record, documenting the amount of the expense, the time and place of travel or entertainment or date and description of a gift, the business purpose, and the business relationship to the taxpayer of the person being entertained or receiving a gift. This information is to be recorded by the taxpayer at or near the time of the expense.

The 1984 Act extended the substantiation requirements of section 274 (d) to any deduction or credit claimed with respect to "listed property" (as defined in section 280F (d) (4)). Because listed property includes any passenger automobile or any other property used as a means of transportation, the substantiation requirements now apply to both travel away from home and to local use of a vehicle. The 1984 Act also amended section 274 (d) to require "adequate contemporaneous records" and removed from section 274 (d) the use of sufficient corroborating evidence.

An examination of the temporary regulations issued last October reveals that the type of records to be kept and the information to be contained in those records to substantiate the business use of vehicles for local travel are essentially the same as the records and information required with respect to travel away from home. Despite the addition of the word "contemporaneous" to section 274 (d), the temporary regulations also provide that information is to be recorded at or near the time of the use of the vehicle, just as under the 1962 regulations. The temporary regulations, therefore, extended the substantiation requirements of section 274 (d) to additional types of expenses, without making those requirements any more rigorous.

The additional temporary regulations published in February establish four safe harbors that substantially reduce or eliminate altogether any recordkeeping requirements. It is thought that a majority of taxpayers subject to the requirements of section 274 (d) with respect to the business use of vehicles will be able to demonstrate eligibility to take advantage of one of those special rules.

As comments are being received and preparations are made for the public hearing beginning April 16, 1985, the Service is considering what other action may be taken. One possibility is an amendment of § 1.274-5 so that it applies to local travel and to deductions or credits claimed with respect to listed property. The safe harbors of § 1.274-6T could also be incorporated into the provisions of § 1.274-5. Alternatively, the new regulations could be expanded to allow substantiation of business expenses with evidence other than journals or diaries and to include additional safe harbors.

SENATOR DECONCINI: Yesterday, In hearings before the House Ways and Means Committee, Assistant Treasury Secretary Ronald Pearlman told the Committee that Treasury "want(s) to respond in a constructive and positive manner." He also said that Treasury was willing to "make further changes in the legislation." Can you tell me what kind of changes are being considered by Treasury?

MR. EGGER: Not at this time, Senator. We still are receiving comments on the regulations until April 8, 1985. Public hearings will be held April 16, 17 and 18, 1985 to hear oral comments from the public. After receiving all comments, we will evaluate what changes will be included in the final regulations. We will attempt in drafting the final regulations to address the issues raised by today's witnesses, as well as those raised by the general public in their comments on the regulations, in as constructive and responsive a manner as possible.

SENATOR DECONCINI: Before coming to the U.S. Senate, I was Pima County Attorney from 1973 through 1976. Recently I received a letter from my successor in that job complaining about the paperwork involved for the county attorney's office under this new regulation. Steve Neely noted, and I think accurately, "that those of us who have assumed responsibility for running businesses and governmental agencies may have something considerably more important to do than providing day-to-day explanations of our driving habits." I concur with Mr. Neely. Are we creating a public safety hazard by forcing law enforcement officials to dedicate so much time to their driving records instead of catching criminals?

MR. EGGER: Among the recordkeeping safe harbors that were published in the Federal Register on February 20, 1985, there is a special rule for vehicles not used for personal purposes other than commuting. If a law enforcement official is provided with a vehicle to be used on the job and is also required by his employer to commute in that vehicle, but not allowed to use if for other personal purposes, the safe harbor eliminates any recordkeeping burden that might interfere with the official's law enforcement duties.

SENATOR DECONCINI: This Administration has spent a lot of time advocating reduced government paperwork and red tape. The Paperwork Reduction Act requires the Office of Management and Budget to determine whether proposed regulations result in disproportionate increase in paperwork for small business. While I recognize that you do not have responsibility for OMB, can you shed any light on how it was possible for them to conclude that the auto log regulations would not violate the Paperwork Reduction Act? What sort of information did IRS pass on to OMB to allow them to draw this conclusion?

MR. EGGER: We are unable to provide any insights on OMB's activities in this case. Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. §3501 et seq.) and regulations published by OMB (5 C.F.R. §1320.1 et seq.), the Service must request OMB approval of any reporting or recordkeeping requirement contained in regulations. Requests are made on Standard Form 83 which is submitted to OMB. Copies of the regulations and relevant Code sections and a statement supporting approval of the new reporting or recordkeeping requirement accompany the SF 83.

Such requirements are not effective until OMB approval is obtained. These procedures were followed in the case of the temporary and proposed recordkeeping regulations.

QUESTIONS SUBMITTED BY SENATOR LAWTON CHILES

SENATOR CHILES: These regulations impose a severe burden on recordkeeping on the public. It is quite probable that the cost to the public for this recordkeeping may well be much greater than any return to the Treasury. Has the IRS calculated the burden hours for the public caused by the adoption of these regulations? How much revenue can we expect these regulations to bring into the Treasury and what would be the receipts if we returned to the eligibility criteria of the previous law?

MR. EGGER: The Service did calculate the burden hours related to the regulations on recordkeeping -- for both the original temporary and proposed regulations issued last fall and the revised temporary and proposed regulations issued in February. The February revision reduced the burden hours by some 80%.

Treasury Department staff has not yet completed revising estimates showing what revenues this statutory provision produces. Likewise, we are unable at this time to project what the receipts would be if the statute was changed to the criteria of prior law. When such revenue estimates are available, naturally we will share them with your subcommittee.

SENATOR CHILES: Because of the complexity of this recordkeeping requirement, it appears that a large number of IRS Personnel would be required to enforce this provision. What staff resources will be required by IRS to enforce these provisions? What rate of return per dollar to staff investment is expected? How does this compare to other enforcement areas?

MR. EGGER: The Service would not require any further staffing to enforce the recordkeeping provisions, so no separate estimates of yield-cost ratios or related staffing in other areas have been developed. The provisions are expected to result in higher "front-end" compliance, as they provide a definitive standard rather than a judgmental standard, and would provide additional records which would aid the examination process.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

BARBARA S. BROMBERG, ESQ., PAXTON & SEASONGOOD, CINCINNATI, OH, ON BEHALF OF NUMEROUS CLIENTS IN THE NONPROFIT AND FOR-PROFIT SECTOR

JAMES J. GIBBONS, PRESIDENT, MANUFACTURERS' AGENTS NATIONAL ASSOCIATION, LAGUNA HILLS, CA

JAMES D. McCARTHY, ESQ., TAXATION COMMITTEE, SMALL BUSINESS SUBCOMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, WASHINGTON, DC

JOHN W. HAZARD, JR., ESQ., WEBSTER, CHAMBERLAIN & BEAN, WASHINGTON, DC, ON BEHALF OF THE NATIONAL ASSOCIATION OF ACCOUNTANTS

WALTER E. HUIZENGA, ESQ., CHIEF COUNSEL, NATIONAL AUTOMOBILE DEALERS ASSOCIATION, McLEAN, VA

PAUL J. COUGHLIN, JR., ESQ., PRESIDENT, MARYLAND ASSOCIATION OF MANUFACTURERS, BALTIMORE, MD

ROBERT STORK, CPA, DUPUIS & RYDEN, FLINT, MI

Senator ABDNOR. This afternoon the subcommittee is honored to have before it several public spirited citizens from various parts of the country who have volunteered their time and expertise to share with the committee the thoughts on recently promulgated IRS recordkeeping requirements.

This is one Senator who is determined that the use of vehicles on the farms and in the cities is not strangled by bureaucratic paper work and recordkeeping burdens.

Now, our witnesses today are tax attorneys, certifi public accountants, trade association executives, businessmen, and representatives of the U.S. Chamber of Commerce, and the National Association of Manufacturers.

I am confident that these fine witnesses will educate not only the subcommittee, but the committee of the Senate as well as others to the merits of my bill, S. 275. My intention is that the record of these hearings will be delivered to the White House, to the Secretary of the Treasury, to the Commissioner of the IRS, and the chairman of the Senate Finance Committee, and chairman of the House Ways and Means Committee.

So, gentlemen and ladies, what you have to say is very important.The witnesses today will testify in a panel. In the first panel we have Barbara Bromberg from the firm of Paxton & Seasongood, Cincinnati, OH, representing numerous clients in the nonprofit and for-profit sector; James Gibbons, president of the Manufacturers' Agents National

Association from Laguna Hills, CA; James D. McCarthy, representing the U.S. Chamber of Commerce; John W. Hazard of Washington, DC, representing the National Association of Accountants; Walter E. Huizenga, on behalf of the National Automobile Dealers Association; Paul Coughlin, attorney, and president of the Maryland Association of Manufacturers; and Robert Stork, a certified public accountant of Flint, MI.

Ms. Bromberg, we always start out with pretty witnesses first. I listed all your names and titles, because I wanted the record to show who I have here.

PREPARED STATEMENT

Ms. BROMBERG. Thank you, Mr. Chairman. Since I am the first witness of the panel, may I submit our joint statement for the record?

Senator ABDNOR. Without objection, it will be made a part of the record.

[The statement follows:]

STATEMENT OF BARBARA S. BROMBERG, ESQ.; JAMES J. GIBBONS; JAMES D. MCCARTHY, ESQ.; JOHN W. HAZARD, JR., ESQ.; WALTER E. HUIZENGA, ESQ.; PAUL J. COUGHLAN, JR., ESQ.; AND ROBERT A. STORK

Introduction

This Panel is made up of individuals representing persons and corporations who will be adversely affected by the amendments to Section 274 of the Internal Revenue Code, as promulgated by the Tax Reform Act of 1984. Section 274 deals with the substantiation required for deductions under Sections 162, 168 or 212 of the Code for any traveling expense, business gifts, or "listed property." Listed property includes any passenger automobile and other property used as a means of transportation, as defined by Section 280F(d)(5) of the Code. For automobiles and other listed property not used predominantly in a trade or business, the Tax Reform Act of 1984 provides new limitations on the availablity of the investment tax credit (ITC), accelerated cost recovery (ACRS) and the expensing election. Under these rules, the ITC, ACRS and expensing election are not always available to taxpayers. When the ACRS cannot be used, depreciation must be computed under the straight-line method, using a specified life longer than the ACRS recovery. For an owner of listed property to take advantage of the ITS and ACRS, he must be able to show that over 50% of the use of the listed property is that of qualified business use.

We turn now to the substantiation provisions relating to deductions for ACRS or ITC. Under prior law, a taxpayer was required to substantiate any deduction for travel expenses, entertainment, recreation, or gifts through adequate records or other evidence corroborating his own statements. The Tax Reform Act of 1984 changed this to require that taxpayers provide "contemporaneous" records in order to gain favorable tax credits and deductions on cars and other listed property. Thus, the amendments to Section 274(d) require that no deduction or credit be allowed by a taxpayer for automobile use unless the

taxpayer substantiates by "adequate contemporaneous records" the following items:

1. The time and place of the use of the car;
2. The business purpose of the car;
3. The business relationship to the taxpayer of persons entertained, using the car.

The panel members today will discuss the substantiation requirements primarily as they apply to automobiles because it is in this regard that most taxpayers will be adversely affected by the amendment to Section 274(d) and the regulations.

Shortly after passage of the 1984 Act, the Internal Revenue Service issued temporary regulations requiring that taxpayers who take advantage of deductions or a tax credit for the use of autmobiles be required to adhere to the Act's record keeping requirements by maintaining a log containing very specific information. The temporary regulations provide that adequate contemporaneous records under the Act means the keeping of a log, journal, diary, or a similar record in which separate entries are required for each use of the automobile. The regulations state that the log must contain the following:

1. The date of the use of the car;
2. The name of the user of the car;
3. The number of miles driven;
4. The purpose of the use of the car (e.g., "to make a sales presentation to a customer", "to devise a personal buget plan").

The regulations, as originally issued on October 24, 1984, also state that unless the overall use of the car can be determined without entries for non-business uses, then the taxpayer who wishes to take advantage of the ACRS or ITC must make an entry for each use of his car. Thus, in cases where it is not possible to determine if an automobile has an overall business use simply by virtue of business entries in the log or

journal, entries would have to be made for each business and personal use of the car.

The regulations issued in October were subsequently amended by modifications issued on February 20, 1985. The modifications state that a journal, diary, or other similar record need not necessarily be kept, but that contemporaneous records such as trip sheets or cards or time and expense reports will be allowable. The modifications also relax, to a certain extent, the listing of mileage in the record. For example, an entry may now contain either the number of miles or the odometer readings at the beginning and end of each use and only one entry is needed to record a use consisting of a round trip or period of uninterupted business use. De minimis personal use (such as stop for lunch on the way between two business stops) is not an interruption in business use. Furthermore, the temporary regulations state that if the taxpayer fails to provide the record because he looses it or through circumstances beyond his control, he may make a "reasonable reconstruction" of the record and this will accepted.

The modifications establish several "safe harbor" provisions for record keeping. The first one deals with farmers who receive more than 70% of their gross income from farming. Such individuals have a choice of keeping or not keeping records. If no records are kept, then 80% of the use of the vehicle may be treated as business use and 20% as personal use.

Under the second safe harbor rule, if a taxpayer uses a vehicle in a trade or business but keeps it at his or her employers' business permises during non business hours, no record need be kept. The third safe harbor rule has to do with commuting. Under this rule, an employee who is required to commute in his employer's car is not subject to the record keeping requirement provided he obtains only de minimis personal use of

the vehicle and provided the employer accounts for the commuting by including in the employee's income a certain amount for each day the vehicle is used for commuting.

The fourth, and perhaps most important safe harbor rule regards vehicles used for sales or service -- as with salesmen and independent contractors. Under this rule, if an owner's normal business day consists primarily of calling on customers or clients or in making deliveries or visiting job sites, he may satisfy the record keeping requirement in one of two ways. Under the first method, such a person may keep records of personal use of the vehicle. In the alternative, he or she may keep no records and (1) treat 70% of the use of the vehicle as business use and 30% as personal use if the vehicle is an automobile or designed primarily for personal use or (2) treat 80% of the use of the vehicle as business use and 20% as personal use if such vehicle is a truck or other vehicle designed primarily for commercial use.

The amended statute and temporary regulations will be difficult to adhere to, impossible to enforce and, most importantly, will create great strains upon farmers and small businessmen who depend upon their time and productivity to make their hard-earned livings. The members of this panel will discuss the problems raised by the new rules in the following areas: (1) corporations and small businessmen; (2) enforcement and government policy (paperwork reduction and tax simplification); (3) the inadequacies of the recent modifications; (4) differences between record keeping for automobiles and record keeping for travel and entertainment; and (5) adherences by government employees to these record keeping requirements as they apply to the recently released fringe benefit regulations.

1. Corporations and small businessmen

The amended statute and regulations have raised numerous concerns for both small businessmen and large corporations due

to their burdensome and uncertain nature. Large corporations which own cars used by employees do not traditionally require that their employees make written records at every stop light and turn during the car's use. This is because such a requirement would waste an inordinate amount of time, (particularly where an employee has never before had to make such a record) and would reduce job productivity considerably. Yet large companies now feel that they are forced to do this or loose deductions for perfectly legitimate business properties.

The scenario is even worse for the small buisnessman. Small businessmen depend on their time for earning their living -- much more than large companies do, and the new regulations unecessarily burden and bottle up that time. Even if a businessman keeps a contemporaneous record, he has no guarantee, under these new regulations, that such a record will be accepted by the Internal Revenue Service. The sheer time and energy required in recording the date, mileage, destination, person seen, business purpose, and expense incurred for each day or each use of the automobile, will cut into the profits of the small businessman enormously. This is reason enough not to allow the statute and regulations to stand as they are.

2. Enforcement and Government Policy

The new rules illustrate an unfortunate "big borther" aspect of the Internal Revenue Service. The regulations seem oddly chosen, vague, and cotain overtones it is difficult to be sure of. How many businessmen, whether they work for large corporations or are self-employed, have difficulty presently trusting the present tax system or their local revenue agents or auditors? Will this trust decline even further if these rules go into effect? Do not these rules make suspected criminals out of all honest taxpayers?

Not only do the new rules place all taxpayers who try to take advantage of the ACRS and ITC under suspicion to some degree, they fly in the face of a definite and much needed move-

ment towards "tax simplification." It would be difficult to imagine something more unsimple or more complicated than the adherence and enforcement of the rules as they presently exist.

The panel believes that the volumes of paperwork the regulations will require will in no way encourage the continued voluntary compliance with the tax code. Voluntary compliance is an issue with which the Internal Revenue Service has been concerned for some time due to the complicated nature of the tax code as it currently exists and the dissatisfaction of many taxpayers concerning what they perceive as unfair abuses by an advantaged few and the unwillingness of the Internal Revenue Service to cooperate with taxpayers in developing a more equitable tax system. There is simply no way that the statute and regulations, as currently drafted, can work in a satisfactory "cost-benefit" manner.

3. Inadequacies of the Recent Modifications

Many persons had hoped the recently announced modifications which grant the above-described safe harbor benefits to farmers and small businessmen would provide the regulatory relief taxpayers need regarding this issue. Practically, however, the new provisions are too narrowly drawn and will have practically no intrinsic value in their application. For example, the farm vehicle exception is almost ridiculous. Many farmers hold outside jobs which they need to support themselves and their farms, and the safe harbor requirement that a farmer's income from farming be 70% of his gross is a test few farmers will be able to meet. The "no personal use" modification is practically useless. It will have only a limited utility in most cases because by and large vehicles which would be subject to the rule are not kept overnight at an employer's place of business. The reason for this is that such premises are usually too unsafe. It is difficult to say how the Internal Revenue Service managed to invent the "commuting" safe harbor provision -- the rule which states that no record keeping is needed for vehicles

used for commuting purposes only. Will any significant numbers of persons (aside, perhaps from police officers) be able to use this safe harbor?

The only safe harbor provision which begins to make sense is the one involving sales and service vehicles. But even here the IRS has fallen far short of what is required. This rule states that, depending on the type of vehicle involved, 70 or 80% of the use of a small businessman's vehicle may be deemed business use. We have these questions for the Internal Revenue Service with regard to this last safe harbor provision: Who decided upon the arbitrary lines of 70 and 80%? In a familiar pattern, the Internal Revenue Service is simply trying to lull unsuspecting taxpayers into thinking that they are likely to have at the very most only 70 or 80% business use of their vehicles and that if they know whats good for them, they will "contribute" the rest of their hard-earned deduction to the U.S. Government.

The unfairness of the modifications is made apparent in other ways aside from those noted above. First of all, there is no adequate definition of "sales and services" for the safe harbor provision relating to salesmen and independent contractors. Also, the modifications to the rules don't grant the safe harbor provisions to those who use computers or airplanes -- property which would otherwise come under the ACRS or ITC deductions. Perhaps the biggest problem with the modifications is that they make a broad sweeping assumption that a person would not ever be able to claim more than 70 or 80% worth of business use of a vehicle.

The modifications also fall short of providing a remedy for burdensome record keeping because they simply add another layer of confusion to an already cumbersome and unworkable system. It seems the IRS is going to a great deal of trouble to create a system which will be far less than cost effective. It has

been suggested that these regulations will cost 20 times the revenue they will generate. In an era supposedly dedicated to tax simplification and to making taxation more equitable for all taxpayers, the record keeping requirements proposed by the IRS do not present a very welcome solution to the substantiation problem. Additionally, it is difficult to see how we can expect workers and entrepreneurs to become independent and productive if they are saddled with burdensome regulations such as this.

4. Differences between record keeping for cars and record keeping for travel and entertainment

May the above arguments be advanced in disfavor of the contemporaneous record keeping requirements with regard to gifts, travel and entertainment? Porbably not. Why? Because, most businessmen are already used to making some type of record for their business and entertainment expenses and the contemporaneous aspect, although burdensome, will be less unfamiliar to them. Additionally, they can make their travel and entertainment computations while they have a free moment -- not while they are behind the wheel of a car. This in itself is enough of a difference between the auto record keeping requirements and the travel and entertainment record keeping requirements to distinguish their respective applications. We do not mean to imply, however, that we advocate the contemporaneous record keeping requirements for business and entertainment expenses. We believe, rather, that Section 274 of the Code should be amended as is presently provided for in S. 245 and that the regulations should be rescinded.

5. Will government employees be required to keep records under the new fringe benefit regulations?

The fringe benefit regulations promulgated by the Department of the Treasury require that in order for an employee who is provided with an automobile by his employer to deduct an amount

representing the business use of the car from his income, he must be able to substantiate by adequate contemporaneous records, such business use. The panel is interested to know whether government employees who are provided cars and/or chauffers will be required to maintain adequate contemporaneous records of their business and non-business use of such vehicles. Will such employees be deemed to have income because of the government provided cars, and if so will they be allowed to differentiate between personal use and business use? The members of the panel would suggest, upon information and belief, that certain Departments of the government, notably the Department of Defense, do not intend to abide by the adequate contemporaneous record keeping requirements of the fringe benefit regulations. If such noncompliance by government agencies is a fact, the members of the panel would like to know why in light of this the Internal Revenue Service expects private citizens to maintain unreasonable and preposterous records for business use of autombiles.

Conclusion

For the foregoing reasons, the members of the panel support the repeal of the amendments to Section 274(d) of the Internal Revenue Code as well as the recision of the regulations recently promulgated by the Internal Revenue Service.

STATEMENT OF BARBARA BROMBERG

Ms. BROMBERG. On behalf of the panel, I want to thank you for this opportunity to be here today. Others on the panel will discuss the effect of these rules on the average person who, as the Senator suggested, is not equipped as an attorney or accountant to cope with them.

The big brother aspects of these rules, which convert the local CPA into another arm of the IRS, and the fact that these rules seem to fly in the face of the tax simplification goals that I think we are all cognizant of.

I would like to address my comments to two specific areas. First, the effect of these rules on nonprofit organizations which often depend traditionally on lower paid staff and do not have a professional wherewithall to deal with them. And, second, I would like to address my comments to the recent rules that have been put out by the IRS and how they have been viewed by our clients.

First, briefly with regard to the nonprofits, the Senator mentioned that when he was at home, clergy contacted him about these rules. And I would say this is very typical of the nonprofit situation. They traditionally have accounted to their employers through reimbursement records that have been appropriate for that type of operation, charitable, and education endeavor.

I am inundated with questions as to what more do they have to do, and, in fact, to be honest to that, is that we really don't know. There is nothing in these regulations that addresses them, and yet we feel that if we tell them to do nothing more, they are going to be acting at their peril.

They are very confused with this. They don't have the staff to deal with it, they don't have the professional advisers.

We feel that legitimate deductions will be lost in these cases, and that, again, nothing in the regulations addresses these concerns.

Now, I want to turn my attention to why the new rules that have been issued have not solved the problem, but rather in our view, have created another layer of regulation and difficulty. They are called safe harbors.

What they very well may be is a trap for the unwary. They are another layer that we have to wade through to determine if you are qualified to not keep the log. And when clients ask us what to do, and are they under these rules, our advice is, if there is any doubt, has to be to keep the records, because the penalty for not doing this is to lose a deduction to which you are otherwise entitled.

On audit, if you go in and you do not have your log, and the IRS agent inquires as to why you do not have a log, you will have to prove that you are in one of these safe harbors. It merely adds another layer to the audit.

Furthermore, as you indicated, Senator, these new rules do not cover people who spend a great deal of time in their offices as well as in their cars, and this is probably 90 percent of the business population.

Furthermore, we must now check, cross-check these new regulations with the old regulations, since there are parts remaining of each, and that is a task that puts, I think, the finest tax lawyer to a very hard task, let alone the average citizen.

Last week I made a speech in Kentucky to a group of attorneys who are the ones who will have to advise clients with regard to keeping these logs. These are the people who are supposed to know the rules.

The questions that I got, about 10 in number, both on the original rules and on the new release, indicated clearly that these people who are supposed to be advisers simply can't figure out the rules themselves.

How is the average person, businessman, going to do this?

In conclusion, as has been mentioned, this seems to be another situation of overkill for the entire business population of the country as being penalized for the few cheaters.

Mr. Chairman, I thank you for the opportunity to testify here today.

Senator ABDNOR. Well, thank you, Ms. Bromberg.

When we are finished with the testimony, I would like to ask a few questions.

Mr. Gibbons, we are happy to have you with us today, all the way from California, and I assume you have a great deal of interest in this problem. We welcome your testimony.

STATEMENT OF JAMES GIBBONS

Mr. GIBBONS. Thank you very much, sir.

Mr. Chairman and members of the committee:

It is a pleasure to be here today to discuss regulations related to recordkeeping for automobiles in business use.

I am the president of Manufacturers' Agents National Association, as well as cochairman of the executive committee of the Small Business and Legislative Counsel here in Washington.

Manufacturers' agents are some 190,000 independent contractors and their employees, whose livelihood is made regularly traveling from one account to another. They travel an average of 45,000 miles a year in servicing these accounts, and make some 12 to 15 calls a day.

As independent contractors, they represent from 5 to 10 separate manufacturers, in an exclusive territory, and as their business volume grows, additional men are hired to make the national average per men, per agency, to approximately 5.5 people. And for years, at the request of the IRS, as a matter of recordkeeping, each salesman has kept a diary of his daily activities.

The record shows the people and the companies called upon, the purpose of the call, as well as travel and entertainment expenses incurred that day.

Manufacturers' agents are good citizens. They are dedicated in assisting the effort in reducing the deficit, as well as the enhancement of the gross national product of this country.

My appearance here today should not be viewed as endorsements made to evade, or avoid, or members' fair share of taxing.

Manufacturers' agents feel, however, that the method they have used in prior years to keep accurate expense records, provides a true picture of their activities in their additional requirements of adequate and contemporaneous records are already being complied with to a satisfactory degree.

They also feel that additional record responsibilities of recording the same data as is currently called for in these new recordkeeping requirements is a redundant, and a useless burden. And for the past many years, the old record has been satisfactory to the Internal Revenue Service and its issue.

We can't see how this new measure is necessary. We respectfully request that this new ruling be withdrawn.

Thank you, sir.

Senator ABDNOR. Thank you, Mr. Gibbons.

Mr. McCarthy, we are happy to have you here with us.

STATEMENT OF JAMES McCARTHY

Mr. MCCARTHY. Thank you, Senator.

I am here serving as the chairman of the Small Business Subcommittee. I work for a firm called General Business Services, which is involved in servicing small businesses throughout the United States. We have franchises in all 50 States that work with thousands and thousands of small business persons.

So I am here to speak essentially on behalf of the small business person. We think the answer—there is a terrible problem. We think the answer is a change in the statute, doing away with the contemporaneous recordkeeping provision.

Senator ABDNOR. You mean go back to what we have?

Mr. MCCARTHY. Yes; I don't think you can improve the regulations. They won't work. There was one set to work with, it was difficult to work with; the new set is easier to work with. It is 15 pages of regulations. When you have answered all the exceptions that have been coming up now, it will be hundreds of pages of further exceptions.

We need a change in the statute. I say this with some reluctance, because my firm is also in the business of selling logs, and we have sold tens and tens of thousands of them to start with, and we found a year's worth of records, and we couldn't do that, so now we are coming out with a quarterly log. A real bonanza.

Where do I keep my log for my snowmobile, which is other listed property? There was an exception made for persons who use a vehicle exclusively for business purposes who keep it at their place at night at their home.

All of our business counselors run their businesses out of their home. Why are they an exception?

I talked to an employee who had a plumbing truck. He takes the plumbing truck home at night, so he can be ready for emergencies. They told him you are going to pay tax on additional for $750. Why in the world does he have to do that?

The Senator's observations that it will take about 1 hour a day on the average of keeping the log—the cost of keeping the log is more than the tax savings.

We feel firmly that the statutes should be changed. The regulations in addition, however, the regulation that came with it have many, many other problems that the chamber is anxious to work with, the IRS, and after the statute is changed. Thank you, sir.

PREPARED STATEMENT

Senator ABDNOR. I understand that you have a separate statement which we will include in the record.

[The statement follows:]

STATEMENT OF JAMES D. MCCARTHY

Good afternoon, I am James D. McCarthy, Executive Vice President, Technical Support Group, with General Business Services, Inc. of Bethesda, Maryland. I am a member of the Taxation Committee of the U.S. Chamber of Commerce and Chairman of its Small Business Subcommittee. I am pleased to have this opportunity to present this statement for the U.S. Chamber and to participate as a member of this panel.

INTRODUCTION

The recently enacted contemporaneous recordkeeping requirements for vehicles, airplanes, computers and other mixed-use property impose a costly and unnecessary burden on tens of thousands of businesses throughout the country, as well as on employees, sole proprietors, and partners seeking to obtain a business deduction for the use of their own car or other designated property. I commend this Subcommittee for its willingness to address this important problem.

The regulations imposing these intrusive and onerous recordkeeping requirements became effective January 1, 1985. On February 20, in response to the growing opposition, the Internal Revenue Service (IRS) revised the rules by creating certain exceptions to the recordkeeping requirements. (At this time, the IRS also revised a related set of regulations concerning fringe benefits that originally were issued on January 7, 1985.)

The revised regulations have created much uncertainty about who must keep the records, and they do not solve the underlying problem --excessive recordkeeping for thousands of businesses. Taxpayers should not be denied legitimate business deductions merely because they did not (or could not) fill out detailed contemporaneous records. Indeed, the regulations make little sense in terms of business practice or the amount of revenue they will generate. The costs of compliance in terms of actual expenses and lost productivity likely will exceed the annual revenue gain. Further, the net revenue gain to the government will be minimal, or nonexistent, because the substantial out-of-pocket compliance costs are deductible business expenses.

Few federal bureaucratic actions in recent years have generated such a spontaneous outcry for relief. The Chamber has had thousands of

communications on this issue. We understand that Congress also has been deluged with mail.

PENDING LEGISLATION

In response to this outcry, several bills have been introduced in the Senate, including S. 245 (Abdnor, R-S.D.), which repeals the contemporaneous recordkeeping requirements for covered property, and S. 260 (Heinz, R-Pa. and Pryor, D-Ark.), which applies to vehicles only. Contemporaneous recordkeeping for other property, such as computers, would not be eliminated by S. 260. In addition more than 20 bills have been introduced in the House, including H.R. 600 (Roemer, D-La.) and H.R. 531 (Anthony, D-Ark.), which repeal the contemporaneous recordkeeping requirements.

The U.S. Chamber urges the Congress to repeal section 179(b) of the Deficit Reduction Act of 1984, the provision imposing the contemporaneous requirement that resulted in the IRS regulations. Although a step in the right direction, we believe that the revisions to the temporary regulations issued February 20 by the IRS are inadequate.

The Chamber supports S. 245, H.R. 600, H.R. 531 and other bills repealing the contemporaneous recordkeeping requirement for all property. We urge that S. 260 be amended to include all business property affected by the regulations.

THE REGULATIONS

Presently, there are three sets of regulations outstanding. These are all interwoven by cross-references to each other which require a legion of accountants and tax attorneys to interpret. Here in Washington and elsewhere tax specialists are working around the clock trying to decipher the rules to comply with these provisions. One can imagine the anguish of the average business owner and his staff throughout the country. These provisions, which already have been revised once, became effective January 1, 1985. Even the most conscientious business person will have difficulty in complying. Fairness in the law requires that relief be granted from the uncertainty created by these provisions.

The February 20 revisions produced exceptions from the recordkeeping requirements for certain classes of taxpayers in the hope of stemming the outcry for relief from these provisions.

One exception is for taxpayers who meet the sales and service definition. They may keep no records and deduct 70 percent of the use of an automobile as business use and 80% of the use of other vehicles as business use. This exception does not benefit most people in sales or service because their business use of their vehicles often exceeds 90%. A business must now face the choice between losing 20% of their rightful deduction or having their employees use company time to fill out endless records. This is time that could be spent generating revenue for the company.

A problem also exists with the definition of sales and service. This exception may be used only for employees who spend "most of a normal business day" using a vehicle to make several stops in connection with the employer's business. Most small business people do not have just one role. They are in the office in an administrative capacity as much as they are out of the office seeing customers or making deliveries. They likely will be unable to meet the definition for this exception to recordkeeping, because they may spend a substantial portion of their day in the office. As a result, many small business people and professionals will still have the burden of the extensive recordkeeping.

The regulations also create an exception for farmers. To qualify, a farmer must receive 70% of his income from farming, excluding passive income. At a time when farmers are facing great economic difficulty, many have been forced to take outside jobs, and many have spouses who work outside of farming. A farmer may not know until the end of the year whether his income from farming is 70% of his total income. At this point it will be too late to keep the records and a valid deduction will be lost. We also question why farmers, but not ranchers, are given a special exception and why cars used by farmers are excluded from this exception.

Fourteen million small businesses exist in this country. Under the new regulations they largely will be excluded from using the provision which permits a person who uses his or her vehicle for commuting to avoid the recordkeeping by imputing $3 per day additional income for the value of the use of the car. This provision is unavailable to persons who are more than 1% owners of the company. Although owning even 1% of a major public corporation may be difficult, owning 1% of a small business is relatively easy. Most small businesses are operated by the owners and frequently the employees have more than 1%

ownership. If the $3 per day value for commuting is not available then the lease value must be used. With large commercial vehicles the lease value is very high. Employees may refuse to commute with these vehicles, and the business will have to pay the cost of storing them in safe garages. The business will also have to absorb decline in productivity resulting from the employee being unable to go directly to the first job-site in the morning. Additional problems with the regulations that would not be solved by the repeal of the contemporaneous requirement are discussed in Appendix A.

With each revision to the contemporaneous recordkeeping provisions, the situation becomes more unacceptable. The confusion and uncertainty places a great burden on business in general, and small business in particular. A business person cannot conduct efficiently normal business transactions, which are so vital to our economy, when endless hours are being devoted to sorting through hundreds of pages of regulations on something so seemingly simple as keeping records for deductions on business property. Throughout this country people, both employers and employees alike, are truly incensed about the paperwork burdens created by these regulations.

CONCLUSION

The IRS and the Congress, which passed the underlying legislation, should recognize that if the business community is to remain productive, create jobs and products, and provide services, we cannot become primarily recordkeepers and generate paperwork on every facet of our activities.

When you look at the temporary regulations, the revised regulations, the advertisements for log books, and the pages of explanation about how to comply, you can clearly understand that these requirements are not an efficient or productive use of a business owner's or employee's time.

The irony of this situation is that the Administration campaigned and was elected on the promises of less government intrusion, less regulation, and less paperwork. These regulations run counter to all those promises.

The immediate repeal of Section 179(b) of the Deficit Reduction Act of 1984 would provide the entire business community with substantial

relief from the onerous, excessive and expensive recordkeeping requirements that have been imposed by the Internal Revenue Service. Another reasonable solution to the problems created by these rules would be the approach adopted by S. 245.

The Chamber believes that following repeal of the contemporaneous recordkeeping requirements hearings should be held to determine if the alleged abuses exist. If they do, then a more reasonable approach should be developed to correct the situation.

Although the Chamber strongly supports the repeal of the contemporaneous recordkeeping requirements, this will not eliminate all of the problems created by the IRS regulations (see Appendix A). The Chamber believes that Congress should also address these issues, and we will be happy to work with you in devising the appropriate solutions.

Thank you.

Appendix A
U.S. Chamber Statement

PROBLEMS WITH THE IRS REGULATIONS THAT WILL NOT BE CURED BY REPEAL OF THE CONTEMPORANEOUS RECORDKEEPING REQUIREMENT

The major problems that have been reported to us to date by our membership that would not be solved by the repeal of the contemporaneous recordkeeping requirement can be divided into three categories: withholding, valuation, and percentage ownership.

Withholding

The regulations require quarterly withholding on the value of the employee's personal use of business property. In many cases this creates a substantial administrative burden for the small amount of revenue involved. One solution would be to have a threshold of $1,000 imputed value before imposing the quarterly withholding requirement. Quarterly withholding would be required only if the imputed value of the personal use of company property exceeded $1000 annually.

Valuation

The valuation of property problem results because a company must determine the fair market value (FMV) of the vehicle as of January 1, 1985, in order to use the annual lease value tables provided in the proposed regulations. Some of our members have thousands of vehicles all purchased at different times and often at a volume discount. It is impossible to establish the FMV of these vehicles without hiring a legion of accountants.

A reasonable solution would be the use of a cents-per-mile rate. If this approach was provided as a safe harbor, companies would not have the burden of valuing the use of each vehicle at a different rate. Unfortunately, the IRS desires to tax employees on the value of having a vehicle available to them, not just on the actual personal use. This approach creates serious injustices. For example, all of us know that having a compact car available to us is more valuable than having the use of a huge truck full of company equipment. However, under the regulations a greater value is imputed for the availability of the larger, more expensive, but less usable vehicle. This may cause employees to refuse to have these large commercial vehicles available to them. The familiar, easily administrated, cents-per-mile method should be used to impute the value of personal use of a company vehicle. This method would protect the lower paid employee from being over-charged for the use of a vehicle not adaptable to personal use.

Businesses have problems with more than just cars under the regulations. Under certain conditions travel in a company plane requires the company to impute income at the charter rate for equivalent travel. The unreasonableness of this lies with the fact that a charter rate includes a profit for someone else. One provision requires imputing three times the value of first class air fare (600% SIFL) for a trip on a company plane by a guest of a "key" employee. Clearly this is punitive and should be corrected.

Percentage Ownership

The regulations allow an employee who commutes with a company vehicle to avoid the recordkeeping simply by adding $3 dollars income per day, providing there is no other personal use and a valid business reason for taking the vehicle home. There is, however, a major exception to this rule. Anyone who owns more than 1% of the company may not use the

$3 per day rate. Instead, the lease value for that particular vehicle is used to determine the additional taxable income. Imagine a company that receives a contract to drive school buses in a rural area. Driving a school bus is not a full-time position as the bus only makes a run in the morning and after-school. The bus is kept at the individual's home so he or she can leave directly in the morning. If that driver is a 1% owner of the company, tax will be imputed on the value of leasing a bus. This value could well exceed the salary received for driving the bus. The 1% ownership test eliminates every small business person in this country and a large number of their longtime employees from using the $3 per day exception.

There is also a problem with special rules for 5% owners of companies and requiring more than 50% actual business use in order to take advantage of the investment and tax audit and accelerated cost recovery system. This 5% rule discriminates against small businesses as it is far more likely that an individual will own 5% of a small company than 5% of a large publicly-held company.

Senator ABDNOR. Thank you, Mr. McCarthy.

You are speaking about an average guy, or the people you are representing?

Mr. MCCARTHY. We are speaking about an average small business person, who has got one truck, one vehicle. We have had him keep the logs on some of them, and we figure at an average, about 1 hour a day.

Senator ABDNOR. Mr. Hazard.

STATEMENT OF JOHN HAZARD

Mr. HAZARD. Yes, sir; Senator Abdnor, I am glad to be here today to testify on behalf of the National Association of Accountants, concerning what the legal and accounting profession consider to be an important matter, namely, the recently enacted recordkeeping requirements of listed property used in a trade or business.

The National Association of Accountants have 350 chapters covering all the 50 States. The members comprise financial managers and controllers.

We deal with research, new trends and practices. As a lawyer, and as a lawyer for an accounting association, I have a special concern for the amount of paper work which the new rules will generate, and the complexity which the recordkeeping requirements will add to an already complex Internal Revenue Service program.

I have received many phone calls in the past few weeks from clients regarding the new rules. They want to know how they can remain growth oriented when saddled with the growth requirements such as those enacted in 1984.

I can honestly say that the only group receiving more calls than Congressmen and Senators are that of accountants. My job is to help clients understand the Internal Revenue Code.

Now, on top of having to wade through dozens of new complex rules such as these, many small- and medium-sized businesses are forced to keep records that will erode the productiveness of their operations.

If they do not keep the records, these businesses will face the loss of important tax reductions, and the severe penalties from the IRS. But because most businessmen are honest, they will comply with the records, and keep it, but this will be psychologically debilitating, retained by the thought of economic reprisals, and not in the patriotic sense concerning recordkeeping.

These regulations will increase paper work to an unreasonable extent for many businessmen, and there will be no doubt that they will add unneeded complexity to the Internal Revenue Code.

This does little to assure small businessmen that the Government is serious about paper work reduction, and tax simplification.

Another concern that accountants have is about the new rules require that one who prepares a return, typically an accountant, tell a client of the recordkeeping rules, and have the client sign a statement that the records comply with the new law.

However, the complexity of the new rules is encouraged by the way the rules are structured.

My point is simply this: Taxpayers who are exasperated by complex and unneeded record requirements, are less likely to comply, not because they are dishonest, but because they are generally bewildered as to what they are required to do, and because they are afraid of losing profits in businesses in which they have invested a great deal of money.

But by logical and workable tax laws, all good taxpayers presently understand that it is unlawful to obtain deductions for the personal use of their automobiles. New rules are not needed to reinforce this understanding.

In summary, accountants and lawyers believe that the best method for encouraging compliance, and obtaining, is not to overburden businessmen with complexity. It is better for businessmen, if they can see their Government helping them by allowing them to be productive, and to grow, instead of slowing them down, sowing seeds of mistrust, and confusion, and threatening them with penalties for noncompliance of unrealistic recordkeeping.

I want to thank you for allowing me to testify here today on behalf of the National Association of Accountants.

Senator ABDNOR. I want to include your entire statements in the record.

I just want to ask one question at this point. I have questions for all of you later, but I think both of us feel that people are basically honest, that they try to do what's right.

Do you think that if you wanted to really cheat and falsify your records, you could do it just as easily under this as you could before?

Mr. HAZARD. Yes; I think you could. I don't think there is any question about that.

Senator ABDNOR. Would most of you agree with that?

Mr. GIBBONS. Absolutely.

Mr. HAZARD. I think most taxpayers would not do that, and don't want to do that.

Senator ABDNOR. That's the way I feel. I get to know them pretty well in rural areas where I come from.

Mr. HAZARD. The teacher in school I once had said you are either honest or you are not. There is no in between.

Senator ABDNOR. If somebody was really out to cheat, take advantage, they could do it. Maybe you can't add thousands of miles over and above what your odometer shows, but if you are trying to distinguish between personal and business, it would seem to me that you would have an awful time trying to pin you down. You got gas receipts for your gas and mechanical bills for your car repairs that it would be almost an impossibility to put them to all this work. And I personally think they would be more anxious to do it, if they had to fill out these bills. It would probably offset the profits of their time. That is a guess on my part.

Mr. MCCARTHY. Senator, the IRS office in New York is on Church Street, and there is a stationery store located right away from the IRS office. They sell diaries. A 1983 diary will cost you $8, and a 1982 diary sells for about $13, so there's a temptation, if you haven't kept your diary throughout the year to do a little——

Senator ABDNOR. If anybody would like to respond to that, I would be happy. Otherwise, go on.

Mr. Huizenga.

STATEMENT OF WALTER HUIZENGA

Mr. HUIZENGA. Thank you, Senator.

I am chief counsel of the National Automobile Dealers Association, and our 25,000 members are franchise new car and truck dealers, and we sell and service both domestic and imported cars in the United States.

I would like to comment today on three areas that haven't been touched on, at least in these hearings, which we believe are very, very important.

The first of those deals with the fact that these regulations are going to cost us in the industry sales. And I suppose it would be different if we were going to say this was going to reduce the deficit and balance the budget, but the fact remains that this is going to be a net loss of revenue for the United States, a monumental headache to the taxpayers, lost sales, jobs, and eventually more lost revenue for the U.S. Government.

This is a very complicated issue. Our dealers, generally speaking, are small businessmen. Our average dealer sells 300 cars a year, has 29 employees. In 10 years that I have been associated with our industry, I

have never, ever received more phone calls, I have never had more confusion, I have never argued with more CPA's, I have never had the opportunity to answer as many, shall we say, interesting letters from our members, who are confused, who want to obey the law, who don't know how.

Our industry is a little unique in that our vehicles are not purchased by our members solely for transportation. They are purchased for resale. ITC depreciation isn't taken on these vehicles, but yet, every car a dealer purchases for resale that sits in inventory is subject to having a log, that the dealer has to keep, that his employees have to keep, that somebody has to keep track of, and this is compounded by the regulations on withholding, and I would like to take a few minutes and talk about the withholding.

You see, the withholding aspect of these regulations increases the paperwork, increases the burden fourfold. Every quarter our dealers are going to have to, and every employer in the United States is going to have to, keep track of who had which car, how long they had it, how many days they had it, business versus personal use.

Every quarter you have to value the vehicles that they have and determine whether or not, if they are a new car, what the value of that vehicle is.

The paperwork in doing this has increased greatly, and it becomes very confusing and unworkable for companies in general, but most particularly for a car dealer.

At the end of March you add up the log, and you sit there, and Fred Smith in your dealership has 24 days in a car. Are we going to sell that car in the next quarter or not? Because you see, if Fred is in that car less than 30 days this year, his taxable income for the personal use of that car increases fourfold.

Retirement plans are keyed to compensation paid upon which there must be withholding. All of the retirement plans and in our retirement trust must be completely redone, otherwise, people will stand in violation of the Federal law for failure to pay in.

We have to figure FICA, and the employee is going to be told on July 1 of this year that his pay check is now going to go down because of this tremendous benefit that he has.

Finally, in the area of withholding, we see that there is no benefit for the Treasury. The businessman, our member, the dealer, whoever, simply sends the check to the IRS for the amount that they have computed to be attributable to the income of this person because of their personal use. No names, no assistance in enforcement, and, frankly, the monumental paper work that's associated with this will far offset the benefit that accrues to the Treasury in having this money for 3 months or 6 months, or 9 months, that they wouldn't have had otherwise.

There is precedent in the law for treating income benefits other than by withholding. For example, currently life insurance premiums paid in excess of $50,000 are noted on the W–2 at the end of the year, and that information is forwarded to the taxpayer and the IRS.

The same could be done with this, and would eliminate by 75 percent the recordkeeping nightmare that will be with each and every business in this country, and particularly with our members.

Finally, the third thing, Senator, are some of the particular problems that accrue in our industry because of these recordkeeping requirements. Most businesses have a situation where there is an individual employee that has an individual car or light duty truck that is that employee's vehicle for that year. That is not true in the automobile business. Every car in that dealership is for sale, and you may be, if you are a dealer, driving one car one day, and another car the next day, because your car sold this afternoon, imagine what that does for the recordkeeping requirement for that individual.

I have talked to dealers who say in the course of a year, I will drive 12, 14, or 16 cars. He has the privilege and the pleasure of keeping 12, 14, and 16 logs, and having his income from the personal use of this car quadruple because he was seeking to maximize his profit on that car by selling it to the customer that came through the door, and wanted that particular vehicle.

Finally, the dealers do have one particular problem in addition to all the others, and that's that dealerships, when they buy and sell cars, realize a gain or a loss immediately, and our members don't understand why if they realize the gain immediately, and pay tax on the gain immediately, why they then have to, with no corresponding deduction for the dealership, have an additional income added to that employee, compounded by the fact that now the dealership must keep all these records, in order to ensure that there is not even more income for the employee.

In summary, Senator, we would ask and urge that this committee enact legislation that would eliminate the recordkeeping requirement, that would eliminate the withholding requirement, in order that our members can get back to what they do best: selling cars and making money.

Thank you.

PREPARED STATEMENT

Senator ABDNOR. Thank you for your statement, Mr. Huizenga. your entire statement will be included in the record.

[The statement follows:]

STATEMENT OF WALTER E. HUIZENGA

My name is Walter E. Huizenga, and I am the Chief Counsel of the National Automobile Dealers Association. Our almost 20,000 members are franchised new car and truck dealers who are engaged in the business of selling and servicing new cars and trucks, both domestic and imported. On behalf of the dealers of America, I would like to express our appreciation for the opportunity to testify before you today on the specific problems faced by the small businessman/dealer in complying with the automobile recordkeeping requirements imposed by the IRS in regulations issued in January of this year.

As an attorney and tax professional, I can tell you that the regulations issued by the Service have proven very confusing to dealers and have generated an avalanche of questions, letters, bulletins, information and misinformation on compliance. NADA has developed a 48 page Guide on the regulations, which quite frankly, does not answer all of the questions; because, in my opinion, many of the questions cannot be presently answered. Well-intentioned and law abiding taxpayers will be, and now are, in technical violation of many of these provisions because of their complexity and their overall inability to "fit" into the real-world conditions of the retail automobile and truck business.

Today I would like to address three major topics. First, that the statutory and regulatory scheme regarding the business use of automobiles and the accounting therefore will not only cost our industry countless thousands of sales, but will fail to add any meaningful revenue to the Treasury of the United States. Second, that Congress must eliminate the administrative burden of withholding for the personal use of a vehicle; and third that Congress must eliminate the burdensome and confusing recordkeeping requirements which are now being imposed.

I. Entire Statutory Scheme will Hurt Auto Sales

The storm of controversy which has arisen around the recordkeeping requirements and the imposition of withholding on the use of automobiles by employees has already caused a reduction in sales of new automobiles and trucks and the process will only accelerate. Lost sales and lost profits translates into lost income to the treasury. The greatly increased cost of compliance will all result in greater corporate deductions--thereby offsetting any gain in revenue by imposition of these requirements.

For example, we know that Security Pacific Bank, as a direct result of these requirements, has eliminated its large fleet of automobiles. Dealers call daily with questions, and I might add, complaints, about dealing with lost sales due to these requirements. Rather than attempt to comply with this mish-mash of regulations, many employers are abandoning their fleets and this hurts our industry, those employed in our industry and ultimately the U.S. Treasury.

II. Withholding on Personal Use of Vehicles Must Be Eliminated

Over and above the lost sales and net loss of revenue to the Treasury posed by these regulations, the imposition of withholding on the imputed income compounds the administrative problem fourfold. Congress must eliminate the employer's responsibility to withhold taxes on these vehicles. First, the cost of the paperwork imposed by this requirement is greatly increased. Second, it is extremely difficult to keep track of vehicle values, especially in a dealership operation where employees are constantly using different vehicles.

Dealers do not purchase cars for general transportation purposes, they inventory vehicles for sale to the public, and do not claim depreciation or ITC on the vehicles their employees drive. Their employees often drive a large number of different

vehicles during the year, and the vehicles that they drive are always for sale. Consequently, from an accounting point of view, it is almost impossible for a dealer to comply with these requirements.

Third, other factors create special problems for dealers in the withholding area. For example, dealers have frequent turnover in their inventory, and it is very difficult to determine whether an employee will be using a vehicle less than 30 days at a higher rental value or whether the employee keeps the car in use for a longer period of time at a lower lease value.

The matter is further complicated by the fact that such things as retirement plans, FICA (social security), etc. are based on compensation subject to withholding and it is impossible to make these computations on a quarterly basis, which is required by law, since the income impact on the vehicle cannot be determined until the end of the year. It should also be noted that the Treasury will receive no real benefit from the requirement that the income imputed to individuals from the use of a vehicle be subject to withholding tax. The benefit to the Treasury of holding the tax money for a few months is more than offset by the deductability of the expense incurred by companies in maintaining records and complying with all of the withholding requirements. Withholding does not provide any additional enforcement mechanism, since the person using the vehicle is not identified with the submission of withholding taxes. In addition, there is precedent for including some forms of employer provided benefits merely as income, but not as wages subject to withholding. For example, life insurance premiums paid by an employer for a life insurance policy for a face amount in excess of $50,000 is included in a lump sum amount on the W-2 form of the employee at the end of the year, but is not subject to withholding requirements. We strongly recommend that the same treatment be provided for the use of vehicles. The amount of income

to the employee should be included simply on the W-2 of the employee and reported as such to the IRS. By reporting this additional income on the W-2 form, the IRS would be on notice that such an employee had income in addition to his wages. This information could be used for enforcement purposes for collecting taxes from the individual for personal use of the vehicle.

III. Congress Must Eliminate Recordkeeping Requirement

Finally, Congress should definitely eliminate the burdensome and unnecessary recordkeeping requirements. We think that it is clear from the broadbased expressions of concern that everyone is confused and feels harrassed by this burdensome requirement. However, dealerships have even greater problems with these recordkeeping requirements. The IRS regulations contemplate that vehicles to which these regulations apply are purchased by a business solely for transportation. Franchised dealers are unique in that they do not purchase cars for general transportation purposes, but rather purchase cars for resale to the public. The recordkeeping requirements proposed by the treasury have created an unworkable situation for franchised dealers. Their employees often drive many different cars during the year, and the vehicles that they drive are always for sale. Current rules imply that dealers have to maintain logs on all vehicles held in inventory. This will require hundreds of logs in each dealership and imposes an unreasonable burden on a dealership. As a result of the unique situation of a franchised new car dealer, we would recommend that no formal recordkeeping requirements be imposed on the use of dealership vehicles which have never been titled.

Senator Abnor, we appreciate the opportunity to be heard on this very important matter, not only to dealers, but to all businesses; and we will be happy to try to answer any questions which you may have.

Senator ABDNOR. There are some real problems, and we may have to reread it all and see all of it. You could serve the same purpose, and eliminate 75 percent of the bookkeeping. I think I heard you say.

Mr. HUIZENGA. Yes, Senator. Unfortunately, the Department of the Treasury tells us it will be necessary for us to come down here and ask Congress to make those changes.

Senator ABDNOR. Mr. Coughlin.

STATEMENT OF PAUL COUGHLIN

Mr. COUGHLIN. Thank you, Mr. Chairman.

My name is Paul Coughlin. I am here representing the Maryland Manufacturers Association, which is a voluntary manufacturers association in the State of Maryland.

I am also here on behalf of my company, Washington Aluminum Co., which is a fabricator of aluminum products in Baltimore, MD.

As a small businessman, as a representative of small businessmen, I can tell you first hand, Senator, that the new adequate contemporaneous regulations pose an unreasonable burden on manufacturers, and should be withdrawn.

The recent amendments to the regulations supposedly to ease their impact, really create artificial distinctions, and add to the complexity of already overly complex regulations.

The object of the regulations is to increase compliance with the law. Many owners and employees use company cars for personal purposes, and they should report the fair value of that use for tax purposes. Those who have not had better resign themselves to the fact that the new rules do not change the law.

The issue is the complexity and detailed reporting that's deemed necessary to improve compliance. At Washington Aluminum Co., for example, we have accounted for business and personal use of company cars on the monthly report.

At year end, the personal mileage is totaled, and added to the employee's W-2 statement at the rate of 15 cents per mile. This system has worked well for us, and it has been reviewed in the past by the IRS.

Senator ABDNOR. They have accepted that, 15 cents?

Mr. COUGHLIN. Yes, sir.

If these regulations are adopted, extensive records will have to be maintained, and we do not wish to be saddled with more paper work.

The safe harbor provisions of the new regulations raise more questions in interpretation. For example, how does an employer establish that an employee is required to use a company car for commuting?

It is also interesting to know that in an article in Monday's Wall Street Journal on this subject, references were made to an opinion poll, which concluded that the tax laws have hindered small business more than any other type of legislation in recent years. The source of the poll is 83 Congressmen.

With all due respect to Mr. Egger and the IRS, there must be a better way than that. The IRS should propose a minimum amount of rec-

ordkeeping necessary to achieve an acceptable level of compliance. No more.

Thank you, Mr. Chairman.

Senator ABDNOR. Thank you.

The last witness on the first panel is Robert Stork, a CPA.

STATEMENT OF ROBERT STORK

Mr. STORK. Thank you, Mr. Chairman.

I am a CPA in Flint, MI. I have a firm of about 70 people, and I am here on their behalf, and on behalf of my clients, who are, incidentally, very much like your constituents. They are small business people from the Midwest, they are very concerned, and they have expressed to me their concern on these regulations, because they believe that the direction of these economics are wrong. They are wrong because they are taking creative people that are able to generate income for their companies, and they are channeling their efforts into administrative duties that are not productive, so the direction is wrong. They detract from productive activity.

For example, I think our firm will probably spend about an average of 70 hours per week just detailing the records for this task. Our area needs businessmen to help them. The area has been devastated for the last 3 years by the depression.

They are starting to come out of it, and all of a sudden, they are devastated by a thunder ball of recordkeeping that they see burdensome. They need guidelines.

We have no guidelines with these regulations, they are too complex, they are too broad, there are too many discriminations in them against the small business owner.

We think they should be removed. We CPA's oppose special rules saying we must get signed statements from clients saying they have this documentation. They are putting us in an adversary position with our clients, the clients who pay our fees, and they are saying, you police it. I'm sorry, that's not our job.

The Commissioner, in his testimony today, stated two instances where deductions of $3,800 were taken, allowed, zero. The IRS has ample power to police the people who are not complying properly. They have the tools they need. They just need to use them.

Thank you very much.

Senator ABDNOR. Thank you, Mr. Stork. Thank you all for your testimony.

Just a few questions.

Mr. McCarthy, in your opinion, what is the practical impact of these requirements on small business? Will they affect productivity?

Mr. MCCARTHY. Senator, I think they will. I think they are going to encourage some cheating along the line. One of the provisions is if you have a home computer that you have to establish if you use it more than 50 percent of the time for business use to get the investment credits on, and you will use the log on the computer. He will make a

business use, and when you sign on to use the word processor, to write to your girlfriend, all you have to do is not sign on for the personal use letter, and your log will be convincing.

There's a tremendous temptation for people who forget to keep it for 1 month or so, and fill it up. We think it is going to take 1 hour out of each business day, so it is going to hurt the productivity. It is a time we should be out earning a living, not keeping a record for the Government.

Third, it kind of hurts the credibility of the whole system. I think people in the field are looking to Washington, saying what the heck are you guys doing? We came up with a first set of rules, trying to describe them, and then a couple of weeks later, we make a 90-degree turn, and make a whole set of changes when the second regs come out.

We are losing our credibility, they are saying you don't know what you are doing. Why didn't you do your homework the first time around. It is going to hurt productivity, it is hurting the kind of tax morality, I think.

Senator ABDNOR. Thank you.

Mr. Stork, in your opinion, will the confusing nature of these regulations make it more difficult?

Mr. STORK. There is no question. For several reasons. The CPA's won't interpret them the same way. The IRS agents won't interpret them the same way, and the clients have very little knowledge of what is required.

Senator ABDNOR. The taxpayers are going to have a lot more trouble.

Mr. STORK. No question about it.

May I expand on the question you asked about earlier, when you talked about cheating.

The person who wants to cheat is a person who has a very nice record, and they will take it to the IRS and they will buy it.

The person who is busy, and out there making his living is the person who won't make the good record, and he is the person who will be punished.

Senator ABDNOR. That is a good point.

Thank you.

Ms. Bromberg, are the modifications adequate to allow for successful enforcement of regulations, in your opinion?

Ms. BROMBERG. Well, I already expressed my serious doubts about that, and I would say no, they are not, for the reasons that all of the panel have pointed out.

Senator ABDNOR. Well, what do you think about that 70 percent for business, and 80 percent? Are those rational reasons for 70 and 80 percent limitations, what they are talking about in safe harbors?

Ms. BROMBERG. I would not want to speculate where the IRS came up with those safe harbors. I know many businessmen who have gone through IRS audits, and have established to the satisfaction of the agent that they have business use in excess of 80 percent. It is very common. Certainly in excess of 80 percent.

I am afraid that what these regulations will do is lull people into thinking all they can get is 70 percent or 80 percent, even though they are entitled to more.

Senator ABDNOR. Thank you very much.

Mr. Gibbons, are there significant reasons why the old methods of reporting can't continue to work?

Mr. GIBBONS. I don't feel that there are significant reasons. As a matter of fact, I testified earlier that all of the records required are already being kept in a different way by at least salespeople and others who spend an awful lot of time in their cars, and I feel that as we say in Indiana, if it ain't broke, don't fixit, and I think it is adequate, the way it has been.

Senator ABDNOR. Thank you. I am inclined to agree with you.

Mr. Hazard, I want to ask you, in your opinion, will compliance by taxpayers be difficult even if the new rules are adequately explained by lawyers and accountants, do you think they can go out and do the job, or do you see lawyers and accountants assuming kind of a watchdog role for their clients?

Mr. HAZARD. I think compliance will be very difficult, because, first of all, I don't think the new rules can be adequately explained, No. 1.

I think that a lot of lawyers have different kinds of explanations for them. And, second of all, I think, because of that, and because of the difficulty in understanding exactly how they are supposed to be applied, it is going to sow a lot of distrust between taxpayers and the IRS, and also between taxpayers and their hired professionals.

I think you are going to see a great many taxpayers having difficulty knowing exactly what to tell their lawyers, and I think it is going to be a very bad situation.

The lawyers themselves are never going to be sure whether the advice they are giving to their clients is the right kind of advice, and whether what they are telling their clients to do is going to be challenged on audit. And I think it is a very awkward situation for clients and lawyers, and accountants, and also relationships between lawyers and accountants and the IRS, because those lawyers typically deal with the IRS on audits and appeals, and so forth.

Senator ABDNOR. You have to certify everything, the figures for the miles, and all, and you are partially responsible.

Mr. HAZARD. Well, in a way you are responsible. The taxpayer signs the certification. The lawyer is advising the taxpayer it is OK to sign this, it won't be challenged, or if we won't guarantee that it won't be challenged, he is at least telling him it won't be challenged by telling him to sign the certification, that's correct.

Senator ABDNOR. Will the revenues taken from the enforcement of these regulations justify the expense involved in enforcement? How expensive do you think that enforcement will be?

We have to put that down to our audit budget. If we have one that doesn't more than break even by a considerable amount, the Government says no way.

Are you going to drum up $100 million—it would cost more, I think.

Mr. COUGHLIN. We have heard earlier Mr. Egger's suggestion that new regulations might bring in as much as $100 million in increased revenues. They have not offered a cost benefit analysis, but I believe a rough calculation for the manufacturers in the State of Maryland, there are approximately 3,500 manufacturers in the State of Maryland, and if we assume that each manufacturer has but one car or truck, and expense only 1 hour additional per week keeping the records required, I would estimate something in the area of about $6 million additional in cost which would have to be absorbed by the manufacturers. And were we to take Mr. McCarthy's figure of 1 hour per day, that figure would go up to $30 million annually. That's just for manufacturers in the State of Maryland, Mr. Chairman.

So if we were to simply take a rough cut, it is obvious that the cost that would be incurred in order to achieve $100 million level would be substantially in excess of that figure.

I cannot see any cost benefit analysis would justify the cost associated with increase in revenues by $100 million.

Senator ABDNOR. You would think it would be better to pay a flat fee to get out of it, wouldn't you?

Mr. COUGHLIN. Yes, sir; where do you sign up? [Laughter.]

Senator ABDNOR. Mr. Huizenga, is there any mechanical difficulties for automobile dealers as regards the withholding rules and recordkeeping?

Mr. HUIZENGA. Yes, Senator, there is. We put together a 48-page printed guide which, unfortunately, now is obsolete, because the IRS has changed the rules again, but in going through this, and going through it with the dealers, I would like to give you two examples just to show the concrete problems the individual is going to have with this, the IRS rules say on withholding that on March 31 you are supposed to value the value of that benefit to the individual employee.

Let's say on March 28 now I have had, and I am a sales manager dealership, and I have a nice Corvette, because I am doing a nice job with the Chevrolet dealership, and you say things have been going well at the Senate this year, I would like to buy that Corvette. I know, because I read our guide, if I sell you that Corvette today, that the taxable income to me as an employee will go up fourfold, but if I don't sell you that Corvette today, in 3 days the taxable benefit to me as an employee is reduced by 75 percent.

What do you figure the chances are I am going to sell you that car today? I don't think they are very high, and each dealer is going to be faced with the problem that his entire organizational team, as his quarter comes to an end, is not going to be anxious to sell or market their individual car, and this is going to become a very real problem for dealers, a very real problem for our industry.

Second, as I indicated earlier, the entire recordkeeping problem that most of these people have talked about, and most people have talked about, deal with the situation where one individual drives one car. You

get in the car and keep track of mileage, and keep track of the trip, and keep track of the expenses, and you carry a little log around in your pocket, and keep it in the glove box, whatever, but what do you do in a dealership where different employees drive different cars different days all of the time?

In that instance, you have to have a clipboard in every car, and keep track of not only all of the other things, but who drove the car, and then at the end of the month, somebody has to go around and pick up all these sheets, and figure out on which day which employeee drove which car, and for what purpose, and the recordkeeping problem that a dealership faces is just magnified enormously by that aspect of the rule alone.

Thank you.

Senator ABDNOR. Ms. Bromberg, and gentlemen, we appreciate this testimony. We are trying to get some thoughts and facts before our committee, so we can carry on as to what is best under the situation, and we thank you for taking the time and the expertise of your office.

STATEMENTS OF:

GRACE ELLEN RICE, ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION

NICHOLAS E. CALIO, VICE PRESIDENT, GOVERNMENT RELATIONS, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

JOHN MOTLEY, DIRECTOR OF FEDERAL LEGISLATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

FRANK BROST, ATTORNEY, BROST & BROST, PRESHO, SOUTH DAKOTA

Senator ABDNOR. Our second panel today is composed of a group of people from South Dakota.

Ladies and gentlemen, I am very pleased that you waited around this long to give us your testimony. We know each of you can give us your thoughts about how this legislation affects the different sectors of the economy and business in different parts of the country.

So with that, I think we will open up the testimony. Ms. Rice, would you care to begin?

STATEMENT OF GRACE RICE

Ms. RICE. Thank you, Mr. Chairman.

My name is Grace Ellen Rice. The American Farm Bureau Federation is the Nation's largest agricultural organization with a membership exceeding 3 million member families in 48 States and Puerto Rico.

We appreciate the opportunity to appear before the committee today to represent the interests of our farmers and ranchers who produce virtually every type of commodity grown on a commercial basis in this country.

Farm and ranch vehicles are an important part of farming and are used daily to transport farm labor, supplies, livestock, and commodities. Because of the importance of farm vehicles to agriculture, we continue to be concerned about proposed and temporary regulations originally published in the Federal Register on October 24, 1984, and modified

on February 20, 1985, that expand recordkeeping requirements to substantiate deductions and credits for business use of automobiles or listed property.

Although the Internal Revenue Service has how modified the regulations to provide safe harbors for certain types of vehicle use, we continue to support repeal of contemporaneous recordkeeping requirements, which are unduly burdensome and potentially unenforceable.

The behavior of the Federal Government has made taxpayers wary and causes us to wonder where the next assault on taxpayers will come. This is true particularly since there is a major tax bill at least every other year followed by a technical corrections act and regulations that compound the uncertainty of tax law.

In January, voting delegates at the American Farm Bureau Federation's annual meeting opposed the mileage log requirements of the new tax law. While the intent of this particular portion of the Deficit Reduction Act of 1984 may be appropriate to prevent abuse of the investment credit and accelerated depreciation for so-called luxury vehicles, the recordkeeping requirements are inappropriate and increase regulatory burdens at a time when the administration is pledged to regulatory reform.

We are certain the Internal Revenue Service has received a number of comments that raise fact situations never anticipated when the regulations were drafted.

These fact situations, whether they involve farmers, small business owners or independent contractors, illustrate the point that prior law, which required adequate but not contemporaneous recordkeeping, is preferable to the new law.

Even with modification to include the 80–20 and 70–30 percentage allocation of business/personal use without contemporaneous records or the recordkeeping of only personal use, problems continue to exist.

Given the fluctuation of gross farm receipts due in part to sporadic markets, it is possible that a farmer who might qualify for one of the two alternatives under the 70 percent gross income test might be disqualified in a succeeding year. This is true particularly when a spouse earns off-farm income.

For instance, assume a situation in which the farmer has gross receipts of $70,000 and the spouse has earned income of $30,000—not passive investment income—for a total of $100,000 gross income. If gross farm receipts drop to $60,000 the following year, the percentage of the farmer's gross income falls to 67 percent and the status of the recordkeeping requirement is thrown into confusion.

What happens? Must the farmer, if he plans to receive the benefit of the investment credit or ACRS, revert to contemporaneous recordkeeping with all the attendant problems that have already been adequately presented to the committee?

Must the recordkeeping method change because arbitrary percentage requirements have not been met although the type and extent of use have not changed?

In addition, a farmer who claims a business/personal mix of 90–10 percent and chooses to challenge vigorously the personal use records.

Farm employees who drive vehicles home can expect to have the commuting value of the vehicle imputed to them as a taxable fringe benefit for which the employer may withhold taxes. This only adds to the recordkeeping burdens for the farming operation. These are important unanswered questions and situations. We believe that sufficient answers rest in repeal.

Farm bureau supports legislation in Congress to repeal completely the contemporaneous recordkeeping requirements. Constituent response to the issue has helped generate a significant number of cosponsors on repeal legislation such as H.R. 531—Anthony, Democrat-Arkansas, H.R. 600—Roemer, Democrat-Louisiana, S. 260—Heinz, Republican Pennsylvania and Pryor, Democrat-Arkansas, and S. 245—Abdnor, Republican-South Dakota.

We encourage the House Ways and Means Committee and the Senate Finance Committee to give serious consideration to these bills because repeal is the only acceptable remedy to these regulatory problems.

Thank you for the opportunity to present farm bureau's testimony.

Senator ABDNOR. Thank you, Ms. Rice. This applies to different situations as we go along. Regulations are not big enough or vast enough to take care of every situation.

John, you have been there a long time, Mr. Motley. I am sure you have some. I am sure small businessmen have a lot of problems. We are anxious to hear from you.

STATEMENT OF JOHN MOTLEY

Mr. MOTLEY. Thank you. I am John Motley, and I want to thank you on behalf of our half million plus members across this country for the opportunity to testify to IRS's proposed regulations under contemporaneous auto logs.

I have a statement which we have submitted for the record, and I would like to summarize it, and give our views.

Senator ABDNOR. Please do. The entire statement will be made a part of the record.

[The statement follows:]

STATEMENT OF JOHN MOTLEY

My name is John Motley, I am the Director of Federal Legislation for the National Federation of Independent Business (NFIB). On behalf of NFIB's more than half million members I am pleased to be appearing before you today on the subject of IRS regulations on "recordkeeping requirements for business property", and specifically automobile logs.

The Tax Reform Act (TRA) of 1984 included a minor change to Section 274d of the Internal Revenue Code (IRC). The change in the law specifies a new standard for substantiation of business, entertainment, and travel expenses, and deductions for business use of an automobile or other vehicle. Prior to enactment of the 1984 Tax Reform Act, section 274d of the IRC specified that no deduction for travel or entertainment expenses would be allowed unless,"the taxpayer substantiates by adequate records or by sufficient evidence corroborating his statement" the specific details of the expenditure. The 1984 Tax Reform Act changed this standard by specifying that "no deduction or credit shall be allowed unless the taxpayer substantiates by adequate contemporaneous records" the specific details of the expenditure or use of the property.

With this small change made in the tax law, the Treasury and the IRS went to work and issued new regulations specifically defining the requirements for adequate contemporaneous records. IRS issued proposed and temporary regulations on October 24, 1984, outlining the requirements of the new law. The issuance of these regulations resulted in the most extensive unsolicited membership response that we have ever hade. Small business owners apparently learned quickly from their accountants that they were going to be required to keep a amount of new paperwork and that these new regulations might cost a great deal, both in lost tax benefits and lost productivity.

Impressed by this negative reaction to the proposed regulations and by the hostile reception which they received from Members of the House and Senate, the IRS issued amendments to their original

proposal on February 20, 1985. These amendments and the urgent need for remedial legislation to clarify this situation is the specific topic of today's hearings.

In the opinion of the membership of NFIB, the change in the law which occurred last year was ill-considered and unnecesary. Small business owners have no desire to protect abusers of our tax code; however, they are tired of the ever increasing burden of paperwork imposed by the IRS. Tax abuse by a small percentage of the population must not be used as an excuse to impose new paperwork burdens on the rest of the taxpaying population. The IRS has taken this approach in many cases in the past, with the result that paperwork generated for the IRS by small business far exceeds requirements by all other agencies. The government's own paperwork burden estimates reveal that, excluding procurement-related paperwork, the IRS accounts for approximately 65% of all government paperwork required from small businesses.

The recently-amended regulations do not resolve the unacceptable situation created by the original regulations, and NFIB encourages support for legislation to repeal section 179b of the 1984 TRA. In addition to repealing this tax rule, we encourage an examination to of substantiation and recordkeeping rules to determine how some certainty can be brought into this area of the tax law. Extended periods of uncertainty only add to the confision of small business owners and cause substantial compliance costs.

We have conservatively estimated that a minimum of 3 million businesses will be subject to the new log requirements and paperwork rules, resulting in a conservatively estimated cost increase to each business of $1,000. This means an annual cost increase to the small business community alone of $3 billion--all for a revenue provision worth only $150 million. Others have estimated that the cost of complying with these new regulations may exceed $7 billion.

NFIB members urge Congress to repeal the changes made by the 1984 Tax Reform Act that resulted in these regulations, and to

restore the regulations that applied under the old law. We urge that this approach also be taken with the fringe benefit regulations that have been issued by the IRS and are intended to determine the imputed value of any benefit received from personal use of a vehicle. Since the proposed regs on both auto logs and fringe benefits are closely related, we urge that they be reviewed and repealed together.

Amended Regulations-Outstanding Issues

The amendements to the regulations attempt to deal with the most egregious situations created by the original proposal, but in general fail to accomplish any easing of the recordkeeping burdens for most small businesses which remain subject to these rules. The amended regulations specify that a log will not have to be maintained for use of a vehicle if the use of the vehicle falls under several specific exceptions. However, the exceptions themselves result in substantial additional complexity and uncertainty for taxpayers. Instead of resolving the questions of who must maintain a log and when, the issue has become more confused than ever.

Adequate Contemporaneous Records

The amended regulations say ~~that~~ the detail of business use of a vehicle may be provided on a form other than a log, journal or diary. It specifies that other forms such as trip sheet cards or time and expense reports can be used. The only effect of this change is to provide additional ways in which the reams of information can be collected. In addition, a trip sheet or expense report may not have all of the information which the regulations still specify as necessary, resulting in even more paperwork to meet the requirements. These requirements include the date of property use, the name of the property user, the number of miles traveled or the amount of time the property was used, and the purpose of its use.

Safe Harbors

The amended regulations specify that under certain circumstances a log may not be necessary. These circumstances are:

If a road vehicle is never used for any personal purposes (save de minimis exception's);

If a road vehicle is not used for personal purposes other than commuting and the commuting use is deemed for the employers benefit;

If a road vehicle is used by different employees for business purposes only, an allocation of business and personal use can be made on an 80/20 basis in lieu of maintaining a log; or

If a taxpayer receives more than 70 percent of gross income from farming, then a log will not be required if an 80/20 business personal use allocation is made.

In addition to any of these specific safe harbors, the taxpayer may chose to keep a contemporaneous log of all personal use only to determine the allocation of business and personal auto use.

These are the changes which are supposed to clarify the regulations for small business. These half-hearted changes only serve to make matters worse, because they require choices and interject substantial new uncertainty. In most circumstances small business owners will receive no relief from the original rules at all, and still must face many confusing tax problems.

The first problem is the definition of a "road vehicle". The amended regulations are confusing as to whether this definition includes an automobile. Clearly many businesses use an automobile or automobile type vehicle (such as a station wagon) for business purposes. Excluding the use of automobiles in any of the safe

harbors is clearly inequitable. Such a rule would require a contemporaneous log for all automobile type vehicles.

In addition, none of the safe harbors in the new regs. can be used by anyone who owns 1% or more of a business. This means that the new rule provides almost no relief to the vast majority of small business owners. Most are either active salesmen or in a position that requires the use of a vehicle to visit a job site to keep track of employee progress.

The 1% rule also discriminates against a small business that may have allowed a valuable employee to purchase a small amount of equity in the company as an incentive. Large corporations often provide the same type of benefit. However, 1% of AT&T or IBM is very different than 1% of XYZ Construction Co. Key employees at either of the large firms would have to earn millions of dollars in stock before they owned even an infinitesimal portion of these firms. This rule is a double standard for large and small firms in similar circumstances. A minority, or even a majority, ownership in a small business should not be a basis for imposing these horrendous new paperwork rules.

Even if a small business owner chose to use one of the safe harbors provided in the rules, his concerns are not over. The regulations state that the IRS reserves the right to determine whether the business actually qualifies for the safe harbor. This means that if a business used a safe harbor, then IRS could (within its three year audit period) come back and determine that the business did not qualify and insist that since no adequate contemporaneous logs were kept that all of the deductions be disqualified. What kind of certainty is this?

The safe harbor percentages themselves are inequitable. A business may be forced to chose one of the safe harbors to be sure of its status, when under prior rules it could have illustrated greater business use. The requirement to maintain a log is such a major deterrent, because of the inherent costs involved, that it is

virtual blackmail to provide a safe harbor which is far less beneficial to the business than the treatment that would have been available otherwise.

The idea of requiring detailed reporting for personal use of a vehicle only is interesting but probably impractical. It is simply unrealistic to expect an employee to detail any personal use that would admit that he or she was not performing their duties. This is different than requiring an allocation for personal use outside of business hours, the latter does not require the extensive detail which IRS has requested.

These issues remain outstanding and they are the basis for the great amount of confusion that surrounds the regulations. Other remaining unresolved issues include the following:

--The IRS is still not clear on whether a van or truck must be subject to the luxury car rules. Nor has it clearly defined the type of vehicle which may be used in the safe harbors.

--The regulations are effective retroactive to January 1, 1985. It may yet be several months before they are finalized (if they can be) and many small firms who do not understand their obligations may be placed in jeopardy because they have not maintained to date the records these regulations will require.

--Commuting issues remain a concern for many businesses because they are not sure about the type of vehicles the rules will cover and whether minority owners and owner employees will qualify for exclusions.

--The cost of compliance in paperwork burdens and reporting requirements alone will run several billions of dollars. The Joint Tax Committeee in its analysis of these provisions indicated that the revenue pickup in 1985 would only be $150 million. We submit that this kind of benefit, in relation to

the cost imposed (in the absence of any testimony or evidence that a major compliance problem exists), is absurd.

--Of major concern are the automatic penalties which are provided by the law and the requirement that a taxpayer must sign a statement for a tax return preparer stating that the taxpayer has accurately complied with the recordkeeping rules. How can a taxpayer be expected to sign anything stating that he has complied with complex and variable rules that haven't even been finalized?

Our tax system relies very heavily on voluntary taxpayer compliance. Regulations like these are a major reason for the increase in taxpayer noncompliance and tax avoidance. When the system becomes this complicated, taxpayers are inclined to simply ignore it.

The IRS constantly complains about taxpayer noncompliance, but it is guilty of ignoring its responsibility to determine the impact of new regulations on small business, as mandated by the Regulatory Flexibility Act and Executive Order 12991. It is clear to us that had the IRS taken even a minimal amount of time to examine these proposed regulations, it would have realized the extraordinary paperwork burden it was placing on the small business community.

The Office of Management and Budget can also be faulted. Under section 3504(h) of the Paperwork Reduction Act it is required to perform a paperwork burden analysis and to determine whether a proposed regulation is going to result in a disproportionate increase in paperwork for small business. According to supporting documentation, OMB signed off on the auto log regulations on August 28, 1984, a full two months before the regulations were finalized and released. It is quite clear that OMB gave the IRS a "blank check" and ignored its responsibility to review paperwork burdens as mandated by Congress.

In addition to the issues we have raised about the proposed regulations, there are several related issues which deal with the fringe benefit regulations. The latter concern us because they could cause serious alterations in the employer-employee relationship. We would encourage an examination of the fringe benefit rules proposed. We believe that they should be reviewed concurrently with the auto log regulations.

Conclusion

We are grateful to Chairman Abdnor for scheduling these hearings, and we encourage the members of this sub-committee to support legislation that will repeal section 179b of the 1984 TRA.

Mr. MOTLEY. Thank you, Mr. Chairman.

In the 15 years that I have been with NFIB, I cannot remember another issue which has gotten such a spontaneous, angry response from the small business community of this country. It does not have to be prompted, and we had a very difficult time answering any of the mail, or any other telephone calls.

It slacked off a little bit in the last couple of weeks, but it is probably the biggest issue that we have had in all of my years in representing small business in Washington. I think that you need to do something now.

I sat and testified before the Ways and Means Committee, and I listened to Secretary Pearlman, and Commissioner Egger, and I listened to Mr. Egger again today, and heard the letter you read from the Assistant Secretary, saying that they wanted to continue to work with the committee and Congress to refine the regulation.

Well, Mr. Chairman, by the time we get these regulations refined, the confusion is going to be too thick to get through.

We are looking at April or May, before new regulations can be adopted or published, and I might advise you that the regulations are in effect retroactive to the first of the year.

I think that is a horrible situation to expect small businessmen and farmers across this country to deal with, and I would suggest that the only real course of action is for you to repeal that section of the law first, and if Congress feels we need to sit down and talk about new ways to substantiate business use, of vehicles and other equipment, we can move forward from his, and to review the very small amount that the Treasury says it is losing in this matter, but I don't think we can sit and wait for another 2 or 3 months.

There is mass confusion across the country right now, and 2 or 3 months of it is likely to use up whatever goodwill is left within the small business and farming communities of this country.

We have had absolutely no complaints in NFIB members on the action taken by Congress to limit the use of luxury automobiles. Not one letter or telephone call or complaints, but we have had hundreds of thousands of telephone calls about the recordkeeping requirements demanded, and it is not really much of a surprise to us, because from our standpoint, IRS has always considered small business to be nothing but a tax shelter. You see it in everything they try to do. It is all the way through the tax reform approach.

They obviously believe that small business people can go into business so they can set up tax shelters and shelter their money, and move it around.

Small business people believe, though, that the Treasury is probably their biggest problem. About 25 percent of the total paper work burden in this country comes from the IRS. Six out of ten of the most honerous forms, according to OMB, come from IRS, and this is before they recommended a proposed and contemporaneous auto log.

I think that both of these agencies have obligations under the Regulatory Flexibility Act passed in 1983, and under the Paper Work Act, in trying to assess the burden on smaller businesses and farms, and I think that IRS grossly miscalculated the burden when it proposed these regulations last summer.

Their original burden estimate was 1,350,000 burden hours, which they gave to OMB in the summer of last year, and which OMB approved in August, 2 full months before the regulations were published.

Since then, they have upgraded their estimate to 79,299,000 burden hours.

Senator ABDNOR. The original——

Mr. MOTLEY. The original burden hours suggested by IRS to comply with these regulations was 1,350,000. That was in August 1984. The regulations were not published in their final form until October 1984, and since then, the burden has been increased to 79,299,000.

Senator ABDNOR. What does that tell us?

Mr. MOTLEY. That tells us, I think, that IRS did a lousy job in estimating the burden to begin with, and that OMB, for some reason, gave them a blank check. OMB has the responsibility of approving all new paper work burdens that agencies go forward with, and if they approved this burden 2 months before the regulations are published, and subsequently go up and increase it seventyfold afterward, it seems to me that they did a pretty poor job, and it is probably the reason that we have the outcry that we have today.

NFIB's estimate,on the other hand, is certain that these requirements will cost typical small business about $100,000 a year, and we consider, again conservativeiy, that many of the small businesses in this country would have to comply, meaning that the cost would then be about $3 billion a year, to collect $150 million, to $150 million in additional revenue. It costs 20 times greater than the revenue.

Senator ABDNOR. Do you think you can substantiate that?

Mr. MOTLEY. We would be certainly ready to substantiate our figures. We would be glad to.

Senator ABDNOR. I may ask you for that.

Mr. MOTLEY. I might say, also, Mr. Chairman, that our figures are very conservative as many figures that have been put forward, as high as $7 billion a year, from what I have seen. The outcry has made Treasury come forward with some amendments to the regulations.

We do not believe that those amendments solve the problem. We believe they continue to be burdensome, and in addition, they also discriminate against small business owners. Employees may be covered, but if you own 1 percent of a small business, you are not covered by the safe harbors.

I would like to just add, if I can. We testified before the Small Business Committee a couple of weeks ago on the same subject, and at that time we thought we had an example, and we know this is accurate, if you own a small home improvement company in the District of Columbia, and you live in Maryland, and you have 13 employees, you have got five crews on the road, and you drive a multipurpose vehicle, a suburban, a station wagon, whatever it might be, you have to keep a contemporaneous auto log. You have to start in the morning when you leave your house, and let's say during the course of the day you have to go out and inspect work, give estimates, go to the suppliers, whatever it might be, go to see your accountant, we followed for the Small Business Committee that contractor for the first 3 hours of his day, and a fairly normal routine. We had six entries by 11 o'clock.

By IRS's own estimate of 3 minutes for each entry, that would have him roughly with 18 minutes or one—18 minutes for the first three entries, or 1 hour a day, 5 hours a week, 260 hours a week, or 6½ weeks a year to figure out logs for the IRS for that small business owner.

We think that that's a tremendous burden, and that small business people in this country simply do not have the time to do it.

Again, to collect $150 million a year in additional revenue.

Mr. Egger, in his testimony yesterday and today, said we have to be very careful about this tax system. That it is based on voluntary compliance. We agree completely. The Government simply does not have the resources to assign everybody in this country their own personal IRS agent.

I think what you have here is trying to raise $150 million in additional revenue through $3 billion or more in cost is an excellent example of what happens when the Government forgets that, and I would agree with the gentleman before, from Indiana, who said if it ain't broke, don't fix it.

Senator ABDNOR. Thank you, Mr. Motley. I appreciate that. Those are some very interesting statistics, that I certainly want to use.

Mr. Brost, I know your plane will be leaving soon, but I couldn't let you go without hearing from you.

STATEMENT OF FRANK BROST

Mr. BROST. Thank you, Senator. I want to at this time thank you and the subcommittee for asking me to testify with regard to this matter.

My name is Frank Brost, and I am an attorney in a small town in rural South Dakota. My practice includes tax preparation, and assistance to approximately 350 small businesses and farmers in and around my community.

I am one of those attorneys trying to interpret these regulations that Ms. Bromberg referred to awhile ago. I am having some confusion myself trying to distinguish between what is and what is not a requirement.

The IRS has caused a considerable uproar in and around my community in South Dakota.

The prior regulations, as I interpret them, required each and every trip to be recorded. I recognize there have been some withdrawal from that by the IRS. I think that is a step in the right direction.

I guess I feel a total abolition would be preferred. I have some responsibilities as a personal tax preparer that causes me some concerns in my interpretation for these records for my clients.

I accept my responsibilities, but I sincerely believe these regulations as proposed are just too difficult for people out in the field to interpret as to what is an 80 percent, 70 percent vehicle. I think it imposes too much of a regulation interpretation upon the field.

Let me give you a few examples of my concerns. Assuming a farmer goes to town to visit the elevator and bank, both clearly business related endeavors—his business there runs longer than anticipated. En route from the elevator to the bank, he would stop at the grocery store to pick up groceries. Clearly a deviation.

Under the regulations, two entries would be necessary. The truth is, that main streets in rural America are no longer than two blocks long.

School has just been released. I, as a farmer, intend to pick up my children and drive them home. These are relatively fairly common phenomena in rural America.

These regulations, I believe, should be repealed, they are too cumbersome, they are unable to be interpreted by us at the grassroots level.

In my opinion, for most of the people to come to me for tax preparation are very unsophisticated people. They do not understand the technicalities of the log. Multiuse of vehicles constitute our main problem in that area.

When my clients go to the repair shop to pay their expenses for the gas, their tires, they write one check. They don't make a delineation at that point in time from the business or nonbusiness portion of it. This is a very difficult area.

I see no way to intelligently, fairly, and honestly interpret the regulations as they are proposed initially, and as they have been amended.

I honestly don't believe the people that I represent are trying to hide income from or cheat the IRS out of taxes that are due. In fact, people take pride in being able to pay their fair share in my country. For the

vast majority of my people honestly and sincerely try to do their best, to be honest with themselves and the IRS.

In the long run, I believe, these regulations will cause a further disregard for the rules, the regulations and a diminished respect for the system, and thus a further retreat from the voluntary system of complying with the Tax Code. If these type of people ever take the position that our system is blatantly unfair, it will certainly lead to the total collapse of the current voluntary system of the IRS.

That concludes my statement, Mr. Chairman, with the exception of one thing. We have a philosophy in South Dakota in addition to that if it ain't broke, don't fix it, that was mentioned by the gentleman from Indiana, but it is the kiss method. Keep it simple, stupid. This does not comply with that philosophy.

PREPARED STATEMENT

Senator ABDNOR. Your prepared statement will be inserted in the record in its entirety.

[The statement follows:]

STATEMENT OF FRANK BROST

I want to thank the subcommittee for asking me to testify today with regard to the automobile log regulations recently published by the Internal Revenue Service. My name is Frank Brost and I am an attorney in a small town in rural South Dakota. My practice includes tax preparation assistance to approximately 250 farmers and small, I emphasize, small business in and around my community.

The regulations recently published by the IRS have caused an uproar in rural America. They affect every farmer and almost every small businessman in my community. As I interpret the regulations it is required that each and every trip be recorded. As a tax advisory and preparer I am also concerned about my own liability. If an audit indicates disregard for the regulations, I have some personal responsibility. I accept my responsibilities, but I firmly believe this regulation is too difficult to interpret. Let me give you a couple of examples. A farmer goes to town to visit the elevator and the bank! Both are clearly business related. His business runs longer than he anticipated. Enroute to the bank from the elevator he stops at the grocery store to pick up groceries. This is clearly personal. Therefore, two entries are necessary. The kicker to this is that most main streets in rural America are not more than two or three blocks long. Let us further complicate this example by hypothesizing that school has just let out. He decides to pick up his children to drive them home, so they do not have to ride the bus. Another entry. This is a relatively common phenomena in every day life in small town America. I could go on for most of the day, but let me give you an example for on merits alone, I believe, these regulations should be repealed.

Most of the people who come to me with requests for tax preparation are relatively unsophistocated when it comes to understanding the technicalities of the law or even as it applies to their recordkeeping. Multiuse vehicles present the case. The 80 percent and 70 percent rules are nice round numbers. However, when my clients go to the repair shop they write one check for repairs, gas tires, and oil. They don't make a delineation. It is a difficult arena in which we must work.

I honestly don't believe these people are trying to hide income from or cheat the IRS out of taxes due. The vast majority honestly and sincerely try their best to be honest with themselves and the IRS. In the long run I believe these regulations will cause a disregard for the rules and regulations, a diminished respect for the system, and thus a further retreat from the voluntary system of complying with the Tax Code. If these type of people ever take the position that the system is blatantly unfair, it will most certainly lead to the collapse of the current system.

Mr. Chairman, this concludes my statement. I want to thank you for allowing me to briefly present the case as it relates to the small taxpayer. I will be happy to answer any questions.

Senator ABDNOR. Thank you. You do dozens and dozens of tax returns. Under the circumstances, you may find a person trying to take advantage and stretch the law in his deductions, expenses, but it is pretty quickly detected. You can tell if somebody was trying to take advantage just by looking at the return.

Mr. BROST. As a preparer, yes. I can determine that, and discourage it. Certainly from my experience, the auditors that we deal with from the IRS are very knowledgeable and fair people. They immediately detect it. They have immediate ways of handling it. I think they do it, and do it very effectively under the present system.

Senator ABDNOR. That was my point. In talking to Mr. Pearlman, if somebody is taking advantage of it, they can quickly detect it in their auditing the return. If they don't, what is the sense of it? You have got to take their word anyway.

So you talked about hours, and dollars it cost to carry out the program. It seems to me it is almost ridiculous.

I think I could find a better way to pick up $100 million. I could put a flat fee on the car. If that is the figure they want, I think everybody in the country would pay $15 for an extra license, if they could avoid all this bookkeeping.

Mr. BROST. I would concur with that, Senator. If you are going to try to beat them out of the area on the tax return to do it, other than this one, in my opinion.

Senator ABDNOR. Mr. Calio. You must have quite a problem with this.

Mr. CALIO. Senator, we do.

STATEMENT OF NICHOLAS CALIO

I am Nicholas E. Calio, vice president of Government relations for the National Association of Wholesaler-Distributors.

The adequate contemporaneous recordkeeping requirements for mixed use property proposed by the IRS, together with the related valuation regulations, raise a host of practical impediments to compliance for affected taxpayers which bespeak a failure by the IRS to comprehend the realities of everyday business activity.

The IRS's newly modified regulations, while a small step in the right direction, substantially fail to resolve the problems associated with the contemporaneous recordkeeping requirements.

The regulatory scheme envisioned by the IRS is simply not administerable in a practical sense. An objective, common sense examination of that regulatory scheme in terms of the overall cost of compliance relative to the amount of revenue, if any, to be gained by the Government demonstrates that remedial legislation is required.

A number of problems flaw the IRS approach. For instance, the regulations coverage of vehicles is overbroad. Vans and light duty trucks

should not be generally covered given their real-world use and the legislative history and intent of Congress in passing section 179 of the Tax Reform Act of 1984.

In addition, the exemptions from the contemporaneous recordkeeping requirements are arbitrary and too narrowly drawn. Whole segments of affected taxpayers unjustifiably receive little or no relief because, among other things, the safe harbor for sales/service personnel is discriminatory in application and fails to extend to the very taxpayers who use their vehicles for business purposes the most.

Finally, NAW believes that the administrability of the recordkeeping requirements is inextricably tied to the administrability of the valuation and reporting/withholding regulations and that Congress should deal with the latter at the same time it deals with the former.

Areas in which the IRS may particularly require legislative guidance include the best method for valuing the personal use of a vehicle—a standard mileage inclusion in our opinion—and, whether all commuting should be a taxable fringe benefit.

PREPARED STATEMENT

Our written statement details a number of specific problems with the regulations as recently modified by the IRS, and we would like to have that submitted in whole into the record.

Senator ABDNOR. Without objection, it will be made a part of the record.

[The statement follows:]

STATEMENT OF NICHOLAS E. CALIO

I. INTRODUCTION

My name is Nicholas E. Calio. I am Vice President of Government Relations for the National Association of Wholesaler-Distributors. On behalf of NAW, I want to express our appreciation to this Subcommittee for providing NAW the opportunity to appear here today to offer our views on the tax recordkeeping and related regulations promulgated by the Internal Revenue Service for business use of an automobile and other property.

At the same time, NAW and its members would like to publicly thank Senator Abdnor, the members of this Subcommittee, and all of the other members of Congress who have recognized the problems created by the IRS regulations and have co-sponsored legislation to repeal those requirements since we believe repeal is absolutely necessary.

II. NAW AND ITS INTEREST IN THE REGULATIONS

The National Association of Wholesaler-Distributors is a federation of 118 national (list attached) and 50 state and regional trade associations as well as 6,000 individual wholesale-distribution companies. All told, NAW's membership includes some 45,000 companies and 150,000 places of business across the country.

NAW's membership is dominated by small businesses and is responsible for over 60 percent of the $1.4 trillion of merchandise which flows through wholesale channels annually. NAW members also employ a comparable percentage, or 3 million, of the 5 million Americans who work in the wholesale distribution trade.

According to the most recent figures available from the Internal Revenue Service, corporate wholesale distribution firms had pre-tax profits of $18.6 billion and paid $7.3 billion in taxes. Furthermore, the annual study of effective corporate tax rates by the Joint Committee on Taxation has consistently shown that the industry pays an effective tax rate of approximately 35 percent.

NAW member companies employ executive, management, sales, and service personnel who require and use company cars to carry on their business. In addition, many of the member companies have need for and make use of light trucks and vans. Given the size and the nature of wholesale distribution businesses, the IRS regulations on auto recordkeeping and fringe benefit valuation, and the paperwork nightmare they create, have a direct and substantial impact on the way NAW members conduct their business.

III. GENERAL COMMENTS ABOUT THE REGULATIONS AND A SUGGESTED APPROACH TO RESOLVING THE PROBLEMS THEY CREATE

It is inevitable that bad law will produce bad implementing regulations and, to be fair, Congress left the IRS holding the proverbial "bag" in this case. Still, even accounting for the over-broad and ill-considered nature of section 179 of the Tax Reform Act of 1984, the proposed recordkeeping regulations, even as modified by the IRS, are at once needlessly burdensome, far-reaching, and complex.

The "adequate contemporaneous" recordkeeping requirements, together with the related valuation regulations, raise a host of practical impediments to compliance for affected taxpayers which bespeak a failure by IRS to comprehend the realities of everyday business activity. In examining -- and hopefully resolving -- these problems, NAW believes the Congress must step back and take a hard, common sense look at the situation in terms of the

overall costs of compliance relative to the amount of revenue, if any, to be gained by the government.

The key to resolving this controversy is that any solution must be administrable in practical sense in order to work. Otherwise, the IRS and Congress are regulating for regulation's sake at great cost to the affected businesses and, perhaps, to the government as well as we will discuss below.

I believe it would be instructive for all members of Congress to personally sit down and attempt to wade through the original and the modified regulations promulgated by the IRS. Such an exercise would provide the perspective necessary to understand the frustrations faced by businessmen and women in dealing with these rules.

An objective examination of the IRS pronouncements demonstrates that both compliance and enforcement will be difficult and that the regulations fail to provide guidance on an array of critical compliance matters. In fact, the regulations raise and leave open far more questions than they answer.

IV. SOME SPECIFIC PROBLEMS WITH THE RECORDKEEPING REGULATIONS

A. The Regulations' Coverage of Vehicles is Overbroad

The newly-proposed IRS regulations, like those issued in October, 1984, request comment on the types of vans or trucks that should be excluded from the definition of "passenger automobile".

Light duty trucks, vans, and other utilitarian vehicles should be excluded from the final regulations consistent with the legislative intent and history of section 179 of the Tax Reform Act of 1984. Section 179 was intended by Congress to rectify a

perceived abuse of the tax system --taxpayers subsidizing the purchase of "luxury" cars through the tax code. Clearly, few light trucks, vans or other utility vehicles fall within the rubric of "luxury" cars, at least as the terms are understood and such vehicles are used within the wholesale distribution industry.

Failure to exempt such vehicles from the scope of the law imposes an extremely onerous, impractical and unnecessary compliance burden on affected businesses for reasons which have nothing to do with the logic of the law. For instance, many vans and light duty trucks bear a company logo and are used for sales and service calls, errands, deliveries, and other, similar purposes. Whether or not the vehicles have logos, however, they are purchased and used because of characteristics which have nothing to do with the abuse section 179 was intended to correct.

Hence, vans and light trucks should be specifically excluded as a matter of course from the recordkeeping requirements unless they are of a type that are clearly intended for personal use. It simply makes no sense to include business-oriented vans and trucks within the rules generally in order to get at the relatively few taxpayers who modify and use such vehicles for personal purposes.

B. The Exemptions from the Contemporaneous Recordkeeping Requirements are Arbitrary and Too Narrowly Drawn

The exemptions from the contemporaneous recordkeeping requirements in the newly-proposed IRS regulations are arbitrary and too narrowly drawn. While the IRS' recent modifications may be viewed as a step in the right direction by some, they fail in all substantial respects in NAW's view to resolve the problems associated with the contemporaneous recordkeeping requirements.

Hence, we believe that the "contemporaneous" requirement should be repealed for all taxpayers across-the-board.

In saying this, we acknowledge that abuses existed under prior law. Nonetheless, it must also be recognized that the vast majority of taxpayers affected by the new regulations have been accounting for the use of their company cars in a satisfactory manner under current auditing standards. As one NAW member from California wrote to his Congressman and Senators:

> "I am an employer of 28 good people engaged in the sale and distribution of welding equipment and industrial supplies. As such, we own five company cars and also compensate five additional people on a monthly basis for the business use of their vehicles. We have never abused this legitimate business expense and have, as a matter of fact, had three IRS audits since I have been at the head of this firm (1964). I am pleased to say not one dollar has resulted on either side due to these audits."

In short, the new and additional recordkeeping requirments now imposed for the use of a company-owned or leased vehicle are unnecessary and overly-harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses like those that comprise the NAW membership simply cannot afford these additional government-imposed paperwork regulatons if they are to maintain a competitive position in the marketplace.

While the various exclusions and safe harbors from contemporaneous recordkeeping recently promulgated by IRS may be helpful to narrow constituencies, they have little or no impact on whole segments of affected taxpayers including most NAW members, their employees, and many other small businessmen.

Take the "sales/service" safe harbor, for instance. It permits taxpayers who spend most of their day in their car making sales or service calls to keep no records and to treat 70 percent of

the use of the car as business use and 30 percent as personal use. However, the safe harbor is not available to taxpayers who spend a substantial portion of their day in the office or who divide their time between the office and other locations. In practical terms, the safe harbor exemption therefore discriminates against taxpayers who use their vehicle 70 percent or more of the time for business, but who are also required to perform office duties.

It also blatantly discriminates against the owners and officers of companies who, contrary to the Treasury Department's apparent opinion, often take a "hands-on" approach to running the business. At many NAW member companies, the owners, officers, and managers are active in sales and marketing, in running branch locations and service centers, and in other similar activities.

The most ludicrous aspect of the safe harbor is that otherwise eligible taxpayers who use their vehicle 70 percent or more of the time for business must either keep contemporaneous records and, in the case of the employee, impute "income" never received or, in the case of the employer, give up ITC and ACRS benefits to which they are entitled.

While the IRS has indicated that it "is considering an alternative method for the employer to satisfy its 'adequate contemporaneous record' requirement" in lieu of the 70 percent/30 percent safe harbor (by establishing different percentages for direct use through representative sampling of company cars), the limitations which the Service places on this potentially corrective measure fundamentally flaw it. The proposed regulations appear to make the alternative available only to employers with large vehicle fleets which contain classes of 100

or more physically similar, similarly-used vehicles. Clearly, this alternative offers no relief to the vast numbers of small businesses who are so substantially affected by these regulations -- and these are the businesses that can least afford the costs associated with the unrealistic requirements currently proposed by the IRS.

One NAW member company, which has branches in 15 states and employs approximately 260 people and 125-150 cars, vans, and trucks, did an analysis of its sales/service personnel's January logs. The analysis shows personal use ranging from 1 to 15 percent. Yet, it is unlikely that the company in question would be able to establish an alternative safe harbor since its fleet, while large by relative standards in our industry, does not contain classes of vehicles in the numbers envisioned by the IRS to validate the sample.

The limimtation is artificial and arbitrary. We question why a sample of a ten vehicle fleet used by a company would not serve the same purpose as a 100 vehicle fleet assuming that the vehicles were physically similar and similarly-used. In sum, the "relief" offered by the new regulations is little relief indeed.

C. Miscellaneous Problems

There are numerous other significant administrability questions on which the regulations provide little or no guidance. To raise just a few, we would ask the IRS how businesses are supposed to deal with circumstances in which vehicles are frequently transferred between individuals and between branch locations. Is the log supposed to go with the vehicle or with the individual? It would seem by implication that two logs really must be kept. One log must stay with each vehicle and one log must be kept by each individual who's assigned any sort of company vehicle for any period of time during a year.

These questions not only complicate the vehicle issue, they also severely complicate a business' ability to properly report taxes to the states as well as the Federal government. All told, the regulations are an administrative nightmare in practical terms.

V. THE RELATED VALUATION AND REPORTING/WITHHOLDING PROBLEMS

The questions raised above underscore a point which NAW believes must be made -- the administrability of the recordkeeping requirements is inextricably tied to the administrability of the valuation and reporting/withholding regulations and Congress should deal with the latter at the same time it deals with the former. Hence, we would like to briefly examine some of the valuation problems.

I emphasize at the outset that NAW is not saying that the reporting of income and withholding on it are the problem. The problem, again, lies in the administrability of what is being proposed.

It seems to us that the Congress and the IRS can approach this matter in two ways. You can construct a system which seeks arithmetical accuracy and every available tax dollar by attempting to cover every conceivable variation in the "actual" value of the benefit. The result of this choice, in our opinion, will be complexity, little guidance, substantial burdens and cost on business and, in the end, precious little in the way of new government revenue.

On the other hand, you can construct a system which sacrifices mathmatical precision for simplicity. In this case, you get a system which is hopefully administrable, encourages compliance, and, critically, raises more revenue than it costs in compliance.

If Congress and the IRS fail to adequately account for the costs of compliance, Peter will be robbed to pay Paul. The compliance problems discussed both above and below engender significant costs to small and large businesses. While NAW's members and other businesses have to pay those costs, they are business expense deductions which lower tax payments. The result is an inefficient and uneconomic use of business capital which may concomitantly reduce government revenue.

That being said, NAW believes that Congress should provide the IRS guidance on the valuation of employer-provided automobiles (and other fringe benefits). It should be made clear, for instance, that employees who secure vehicles in the evening are fulfilling employment responsibility. Therefore, they should not be taxed on such activity despite the IRS' assertion that all commuting in a company vehicle is a taxable non-cash fringe benefit.

In addition, the fringe benefit rules should be modified to provide an alternative standard beyond the annual lease value for valuing the personal use of a vehicle. The annual lease value standard will be complex and difficult to administer in many cases, especially when large numbers of vehicles are involved. Hence, a simple alternative is in order.

The National Association of Wholesaler-Distributors believes that the best method for determining the amount of income to be reported by an employee using a company car is a straightforward mileage inclusion like the standard 20.5 cents deduction currently permitted by IRS as the deduction for business mileage. That the 20.5 cent benchmark would be the appropriate measure of income inclusion seems unassailable if it is, in fact, the appropriate measure for deductions permitted for business use of a personally-owned automobile.

A single standard mileage rate might result in either undervaluing or overvaluing the benefit of personal use of some cars. Nonetheless, a standard mileage inclusion figure is superior and preferable to any more sophisticated approach which might be advanced. When the real-world complications arising from the reporting and withholding aspects of these regulations are confronted, the enormity of the analytical work and the administrative reporting burden imposed on taxpayers become apparent. While the standard mileage inclusion does not eliminate all of the attendant problems, it does substantially ameliorate them.

VI. CONCLUSION

This issue has already occupied too much of the productive time of the Congress, businessmen, and their employees. Rather than create a continuing merry-go-round of IRS pronouncements followed by public comment and outrage, Congress should repeal the contemporaneous recordkeeping requirements for all taxpayers for the business use of automobiles and other property and should also act to lend some practicality to the rules on valuation and reporting of, and withholding on, fringe benefits.

I want to thank the members of the Committee again for the opportunity to present this testimony today on behalf of the National Association of Wholesaler-Distributors.

Mr. CALIO. Senator, I would like to thank you and your subcommittee for focusing attention on this issue. You were earlier on in the lead on this issue, and we thank you for that.

In the interest of time, I would like to highlight just a few of the problems that we point out in our statement. First, I would like to talk about an approach to this problem, which seems to have eluded some people around town. We think, we should first have every Member of Congress wade through the regulations that the IRS has promulgated, which would provide an understanding of the frustrations of businessmen and women around the country trying to comply.

We would then suggest that we step back, and take a common sense approach to this in terms of the overall cost, relative to the revenue again.

I think you would ask why in the world are we doing this? Rarely have we seen so much trouble for so little purpose in a town that regulates for regulations sake. There has been an improvement over that in the last 4 years, but there seems to be a return to that. We think there would be abuse in the system.

We don't think it is necessary to swat flies with a sledge hammer. We think most people are honest. We have heard as much in the thousands of letters we have got from our members, where audits turned out just fine.

I am an employer of 28 good people involved in the sale and distribution of welding equipment, and industrial supplies. As such, we own five company cars, and compensate five additional people on a monthly basis with the business use of their vehicles. We have never abused this.

I am pleased to say that not $1 has resulted on either side due to these audits.

Again in thousands of letters, it picks up on a point that you have made before. Most of the letters that we are receiving from our members that they have sent to Members of Congress say, look, if you are going to tax us because you want revenue, just go ahead and do it, and it is not a loss to us on how the IRS is not talking about this is not simply a revenue matter.

The purpose of the tax system is to raise revenue for the Government to carry on its business, and if you are going to regulate for regulation's sake, we think you need to start over.

I would like to look very quickly at a couple of problems that are provided in more detail in our statement. First of all, the coverage by regulation of vehicles is overbroad. We think vans, light trucks, and farm equipment should not be covered at all, period.

The IRS has requested comment on that twice now, but if you go back to the legislative history of the Tax Reform Act of 1984, the actual language may be ambiguous, but the legislative history makes it clear that there was no intent to cover vans and light trucks in the regulations.

We think you should do it by a process of exclusion rather than inclusion. Most of these vehicles have a purpose other than luxury cars.

Most people don't go nightclubbing in vans that have air compressors, and bathrooms in the back.

These rules are too arbitrary. Whole areas of the business are still subject to it. For instance, in the sales and service, 70–30 percent safe harbor, you have to spend most of your day in the car. If you spend any time in the office, you can't use the safe harbor. If you are an owner or officer of the company, that safe harbor is also unappealing to you.

Perhaps the most ludicrous aspect of that safe harbor is if you use your car, of if you use the vehicle more than 70 percent for a business purpose, you are faced with a choice that really does you no good at all. You have to accept the safe harbor and have income computed to you more than you have actually benefited, or you have to give up ITC, and HRS benefits to which you are otherwise entitled.

Finally, I would like to talk very quickly about valuation, because we agree with some of the earlier witnesses. The recordkeeping aspects of it don't really scratch the surface of this involved. Many of those problems relate to the compliance with regard to the withholding. We are saying you have to find something that is administrable in a practical sense to make it work.

We have heard from one of our members who has had an outside analysis done, about what it is going to cost him to comply with these regulations. Thirteen thousand dollars is the conservative estimate on what it is going to cost per year. Fifteen thousand dollars a year for the 15 vehicles. They are going to have to bring somebody in to do it.

Now, he made an interesting point. The first thing is, the Government is likely to get a minimal amount of revenue, and they, and the company might benefit from it as well.

More importantly, he noted that he is a profitable company, and that $15,000 is going to constitute a legitimate expense deduction, where the Government is going to lose revenue than gain revenue, because his payments are going to be lower through that deduction.

What in the world are we doing here?

We think, again, some common sense is needed, which this committee can help provide.

I agree with Mr. Motley, and many other people in the business community. We can't keep having a round robin redrawing of regulations by the IRS.

This thing is like a vampire that is going to keep raising its head until we drive a stake through its heart. We need to kill these regulations as quickly as possible, not only because of the confusion they are causing, but because of the potential impact on taxpayers down the road.

As a final point, we have been hearing something very disturbing very recently. They have heard from Congress, saying they are going to kill these regulations and they are not keeping records anymore. That is going to be a problem in the future.

Senator ABDNOR. Thank you. That last sentence you said is actually very true, I have had people back in South Dakota come up and say thank you for getting rid of that terrible law. I said for heavens sake, don't quit logging, I haven't got rid of it yet. It is almost damaging to try to talk about what you are trying to do.

I never insinuated to anyone that we are now free of it. I don't know what is going to happen to some of those people who are not logging until we get rid of that. That is very much a part of the law and part of IRS, and you can get into a lot of problems.

Do you people feel that—this is a tough question. The 80 percent, the farmers have followed a little bit, haven't they, Ms. Rice, from what it was before, by being able to take off 80 percent on the vehicles that they used considerably in the farming business, and found people a little more willing to accept than they were before?

Ms. RICE. That is true. We would say these modifications are an improvement, but the percentages are extremely arbitrary. We would like to see them repealed.

Senator ABDNOR. But in business now, when you try to do some of our little main street, South Dakota, it is really grossly unfair, don't you think, Mr. Brost, in using the car, the most you can get is 70 percent under the safe harbor features?

Mr. BROST. Yes, definitely. That is an improper way to approach it.

Senator ABDNOR. I believe the way I heard from this loose set of regulations proposed is that they still can't make one entry a day. I think, in your business, do they have to enter every personal use of that on a trip?

Mr. CALIO. Yes, Senator; they would, and the way most of our people operate seems to be lost on the IRS.

Some companies that may run only $750,000 in business. These businesses were built by people who own them. Any relief in regulations are unavailable to them, and these are the very people who are going to have the most trouble complying, and really can't afford the time it is going to take to comply with those regulations.

Mr. MOTLEY. The 1-percent rule for the use of the safe harbors, if you owned more than 1 percent of the business, you can't use the safe harbors. It is primarily for employees. We have taken care of the employee problem, and we haven't taken care of the problem with the owners, and that is what we base our argument on.

Mr. CALIO. The IRS has made another method for coming up with the safe harbors, and that is power vehicle, but you have to have 100 similarly used vehicles.

We think if you are going to allow a safe harbor to be established by individual companies, you ought to allow smaller companies to do it as well. One of our companies just did an analysis of January, of the January logs. They only have 109 vehicles in their fleet, but they found 15 percent of personal use, with over 200,000 miles driven in January, there should be no reason why that fleet can't establish an alternative safe harbor. Not many companies in the small business world have over 250 vehicles.

Mr. MOTLEY. Senator, a third discrimination on that rule. It is pretty easy to earn one-third of a small business. If you have an employee, and you want to keep them around, it is pretty easy to give them 1 percent of that business.

It is awfully difficult to earn 1 percent of General Motors, or IBM, and you have executives given stock options, and benefits which mean much more than it is to the small business employee. They are not subject to that law, but the employee is.

Senator ABDNOR. That is a good note. I just want to say to Ms. Rice, I did put this piece of legislation in Congress, and that was because my State farm bureau organization first expressed concern and brought it to our attention. My staff was way ahead of me, but when we got back here after the first of the year, we got letters from people back home, and we thank you and your organization for getting us started. I know this is a major problem and all of you know what I am talking about, because you all have something going in South Dakota, at least, and I am sure it is that way in all 50 States.

As I said at the outset, when you talk about withholding deductions, and dividends on savings in the banks, I think a lot of that was generated by the banks themselves. They were handing out cards to fill out. Someone said here this afternoon, this is pretty genuine, coming from people themselves, without any urging from anyone, and it certainly covers a large number of the people. We appreciate the fact that we kept you here 2½ hours.

I think it has been very beneficial. I think it has encouraged some of us who are trying to find some resolutions. To make this work is almost an impossiblity.

If any of you have any thoughts on what we could do to follow up with what the IRS is trying to do, we would be happy to hear it. But I haven't heard of any simple answer to the problems coming out today.

We thank you very, very much, and that will conclude the hearing today.

ADDITIONAL PREPARED STATEMENTS

A number of organizations have requested that their statements be made a part of the record, and I am going to ask unanimous consent that they appear at this point in the record, and further request that the record remain open for 2 weeks. If you know someone who wants to submit a statement for the record, we will include it in the record then.

So with that, I will ask unanimous consent that the regulations we have been talking about today be inserted following my opening statement. We can have those included in the record.

[The statements follow:]

LETTER FROM LEE G. KARL, PRESIDENT, SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.

March 12, 1985

The Honorable James Abdnor
Chairman
Appropriations Committee
Treasury Subcommittee
U.S. Senate
Washington, DC 20510

Dear Chairman Abdnor:

As President of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), representing 2,500 construction contracting corporations nationwide, I want to submit the enclosed testimony for the March 6 hearing record, expressing our strong opposition to the Internal Revenue Service's temporary proposed regulations regarding multiuse business vehicles. From a small business perspective, and SMACNA represents mostly smaller contractors, the regulations would be far too burdensome. The proposed IRS rules and temporary regulations would clearly pose a severe hardship to firms in our industry. Therefore, SMACNA seeks your support for repealing the "contemporaneous" recordkeeping requirements and the tax preparer penalty set forth in the Tax Reform Act of 1984.

While the IRS has eased the original temporary regulations proposed to implement the recordkeeping requirements, the newly published changes fail to resolve the difficulties created by the original recordkeeping regulations. Therefore, legislative action to repeal the requirements that IRS has misused in issuing the regulations is the only solution.

In closing, we would appreciate all the support you can provide in lifting the regulatory burden from the over-regulated small business construction contractor. Please feel free to contact my office or Stan Kolbe, SMACNA Director of Governmental Affairs, if we can assist you in repealing these unrealistic, unworkable and unnecessary regulatory requirements.

Sincerely,

Lee G. Karl

Lee G. Karl
President

STATEMENT OF LEE G. KARL

Mr. Chairman, members of the Senate Appropriations Treasury Subcommittee, the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) appreciates this opportunity to submit testimony on an issue of vital importance to the construction industry, indeed, all small business. SMACNA represents 2,500 construction contracting corporations nationwide, concentrating on commercial and industrial construction projects. While SMACNA consists of both large and small companies, both of which will be harmed by the impractical IRS temporary proposed regulations, a majority of our members are small businesses with a great concern for the problems of over-regulation, excessive paperwork and other threats to improved productivity. Overwhelming opposition amongst our members to the Internal Revenue Service vehicle regulations can be found in all corners of the nation in businesses of every size. Therefore, SMACNA urges continued Congressional support to repeal section 1-19(b) and (c) of the 1984 Tax Reform Act.

BACKGROUND

On October 29, 1984, the Department of Treasury and the IRS issued proposed and temporary regulations defining recordkeeping requirements for business vehicle use, to implement certain provisions of the Tax Reform Act of 1984. The scope of the regulations encompassed automobiles, trucks, vans and specific investment tax credit treatment for each based upon the use by the owner/operator. Specifically, **Congress enacted language in the 1984 Act, under section 274(d), requiring taxpayers to justify travel and**

entertainment expenditures through adequate, contemporaneous recordkeeping.

On January 1st, the requirements of the temporary IRS regulations took effect describing the necessary documentation the taxpayer must be prepared to provide the IRS to qualify business vehicles for tax purposes. These regulations require a small business to maintain a log or diary detailing business use of all vehicles in its possession designated as business vehicles. Briefly, the following information is to be entered into the log at the time of vehicle use:

1) date
2) name of the user
3) number of miles or amount of time vehicle in use
4) exact purpose

REVISED REGULATIONS

On February 20, IRS revised earlier regulations yet left in effect most of the inequitable language that characterized the original regulations.

Exceptions to the original recordkeeping rules now apply in four situations:

* Operators of farm vehicles have the options of keeping track of nonbusiness use only or keeping no records and assuming the vehicle is used for business 80 percent of the time.

* No records are needed for company vehicles that are not used for any personal driving except, for example, to go to lunch.

* No records are needed for company cars whose only personal use is by employees driving to and from work, provided that employees account for the value of that use each work day. (Employers are required to withhold 20 percent of the cash value of this benefit each quarter.)

* Taxpayers who spend most of their day behind the wheel on service or sales calls can qualify for a deduction

by keeping track of just their personal trips, or they may keep no records and assume that the car is used for business 70 percent of the time (80 percent of the time for trucks and commercial-use vehicles).

Single entries for periods of uninterrupted business use or for an extended trip away from home will be permitted, says an IRS spokesman.

There are several aspects of the law SMACNA still finds unacceptable.

* The rule changes do not provide an adequate definition of what constitutes "sales and service" for purposes of recordkeeping requirements;

* The revisions do not deal with use of computers or airplanes;

* Business people not wanting to settle for the assumption of 80 percent business use in the absence of detailed records would still have to maintain such records to prove higher use;

The revised rules set one type of business against another by failing to recognize that people doing very similar jobs might have sharply different patterns of business use of vehicles. This is particulary true for the construction industry.

The revised rules set one type of business against another by failing to recognize that people doing very similar jobs might have sharply different patterns of business use of vehicles. This is particulary true for the construction industry.

While this requirement may seem satisfactory and workable to those whose business is thinking up regulations, in the real world of construction, and especially for small business construction firms, the log requirement is unfair burdensome and grossly impractical. In fact, it becomes such a barrier to compliance with the law that, if implemented, these businesses undoubtedly will end up losing substantial

legitimate deductions through the sheer impossibility of compliance under these unduly restrictive regulations. Given the extremely low level of profitability in our industry, generally, in the last few years, it is probable that the difficulty in complying with these rules could result in a major increase in contractor business failures. 1984, without these burdensome regulations, was a record year for construction industry business failures according to Dun and Bradstreet Corporation. Further red tape is the least important "favor" IRS can do for small business.

With limited office resources, small business contractors already are overburdened by regulatory paperwork requirements in regard to wage and tax records, safety regulations, pension law, affirmative action rules, preferential procurement quotas and a host of other totally unproductive federally mandated reporting chores.

COST OF COMPLIANCE

Small businesses, generally, are least able to understand these new requirements and to afford the costs of the added recordkeeping. Furthermore, these paper-generating provisions are interrupting normal business operations and are unlikely to result in an appreciable increase in tax revenues. We join others in the business community that question Treasury estimates of $105 million in increased revenues in fiscal year 1985, as it is already illegal to deduct expenses for the personal use of such items as automobiles and computers. In addition, this revenue estimate must be balanced with what it will cost businesses to comply with these requirements. A conservative estimate by the National Society of Public Accountants of $500 a year for each of this nation's 14 million small businesses, would

indicate a cost of close to $7 billion a year for this segment of the business community alone. An even more conservative estimate of $100 a year for each of the country's small businesses would indicate a cost of $1.4 billion a year--still far in excess of the Treasury's estimates of increased revenues.

CONSTRUCTION VEHICLES

The vehicles utilized by the sheet metal and air conditioning contractors are service vehicles, outfitted for construction. Often these vehicles are specifically designed for particular types or aspects of the construction process and have customized designs, including tool compartments and mechanical attachments. They are obviously not outfitted for recreational or family use or casual personal errands.

Also objectionable to the construction industry is the IRS requirement that service vehicles be parked on company property after-hours. A serious problem arises when contractors offer maintenance or emergency service 24-hours a day. This demands that the contractors' employees have constant access to fully equipped company vehicles. To comply with the IRS requirement employees would either travel back to the business office for appropriate equipment prior to driving to the emergency site or be charged for personal use as the result of taking the vehicle home with them. The other alternative is the termination of all heating, ventilating and air conditioning emergency service. Clearly, none of the above options is as practical or cost-effective as the current method of allowing emergency service employees to take vehicles home with them. To penalize the contractor because his business requires providing on-call, cost-effec-

tive emergency service makes little sense. Further, to characterize this type of business service as commuting or tax evasion, as the IRS has, is without basis.

Beyond the unfairness of the proposal to small business construction contractors, Congress should examine its flawed logic concerning vehicle and equipment security. In most cases business employers require employees to take vehicles home to safeguard the vehicle and the highly valuable contents. The alternative is to park the vehicles and expensive cargo in lots where vandalism is the rule rather than the exception. To require employers to purchase new parking facilities, hire security personnel, and substantially increase insurance coverage to correct an abuse that doesn't exist is impossible to justify. While there was no paperwork reduction or regulatory flexibility analysis done on the regulations, it appears that even a common sense analysis was ignored.

THE IMPACT OF IMPRACTICAL REGULATIONS

Excerpts from letters written by contractors should illustrate the unrealistic nature of these regulations. One of our contractors wrote in a letter to his Congressman,

> "We are still engaged in a business that uses vehicles that in no way could be considered to be personal, by any stretch of the imagination. These vehicles, if kept at our place of business overnight, would be subjected to the possibilities of theft and vandalism, not to say anything about the added expense to the consumer, as a result of the individual not being able to be dispatched directly to the job from his home. This is particularly true, in light of the fact that we

advertise regularly, that we provide 24 hour emergency service. Naturally, one or more of our people are on-call day and night, and any number of them are subject to "call out" in the middle of the night to take care of emergency situations. This has been particularly true in severe winter conditions, such as we are experiencing right now.

To suggest that our fellows leave their trucks at the place of business, where they may have to drive through severe snow and other icy conditions to get to our shop and then hoping that the vehicle will still start, sending that vehicle and the serviceman to a homeowner, whose pipes are frozen, or whose furnace will not heat any longer, is adding a significant cost to the charges we must make to the consumer. In an era when the consumer already perceives us as being overpriced many times, we feel this additional financial burden is too much to ask."

Another small business contractor wrote the IRS,

"The published regulations, by IRS, providing guidance in complying to the Tax Reform Act of 1984, and the Tax Reform itself, as it relates to deductibility of company vehicles, has already imposed a severe and punitive penalty to my company, a small business by any definition. I am a plumbing, heating, air conditioning and sheet metal contractor.

The very nature of our business demands that we have company vans and trucks to conduct our business. Often these trucks and

vans, depending on how they are fitted with special lifting devices, etc., exceed the limits imposed by the Act. By no means could these vehicles be used personally by anyone in our business. One visit to our shop would convince the most skeptical believer."

Another letter details why storing vehicles on business premises is impractical and costly,

"It is rarely practical for vehicles to be stored at our shop, which is remote from the areas most of our employees live. It is impractical for two reasons:

1) Left on our premises, we have no economical means to protect them against theft, vandalism, or other perils. If they are stored overnight at the employees home, then we can at least minimize our exposure, since a thief or vandal would probably only strike at that location and not twenty or twenty-five. This, of course, reduces our insurance premiums by keeping our experiences low.

2) Most of our employees are subject to call 24 hours per day, and often are called out in the middle of the night to solve a plumbing, heating or air conditioning problem. Many businesses and families depend on our 24 hour service and we have a reputation in our community of responding rapidly to emergency calls. If we had to store our vehicles at our shop, it not only would cause a great deal

of difficulty in responding to those calls in a timely and efficient manner but, would add considerable costs to the customers invoice."

CONCLUSION

Construction subcontractors in the sheet metal and air conditioning industry have not complained in the past when the prior law required adequate substantiation of expenses. Previously, service vehicles used in an obvious business situation only demanded invoices for customers serviced or visited and some record of sales to fulfill the adequate recordkeeping requirement justifying business use. The new IRS requirement, aimed at clarifying the gray areas of the old law, goes far beyond what is necessary and has created the paperwork nightmare under examination by the Committee.

As mentioned earlier in our remarks, the proposed temporary regulations for recordkeeping could cost businesses over $7 billion to eliminate the $110-140 million in "gray area" abuses that IRS claims exist. The $7 billion includes only the estimated paperwork and ignores lost productivity, higher insurance rates, parking lot acquisitions, increased security expenses, and many other costs directly associated with the regulations.

Due to the exorbitant increase in business paperwork and associated costs, we feel the IRS regulations must be repealed. When combined with the reduced efficiency and productivity that would result for already over-regulated small contractors, we see no other message to send the IRS. The goals of this Administration and Congress are to get government off the back of business and reduce paperwork and red tape. We agree. Therefore, Congress and this Committee

should repeal the IRS regulation and include legislative language preventing situations similar to this one from occurring again.

Thank you.

STATEMENT OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives (NCFC) is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes 107 major marketing and farm supply cooperatives, the 37 banks of the cooperative Farm Credit System, and 32 state councils of farmer cooperatives. Five out of six U.S. farmers are affiliated with one or more cooperatives. The National Council represents about 90 percent of the more than 6,100 local farmer cooperatives in the nation, with a combined membership of nearly 2 million farmers.

On January 22, 1985 the NCFC Board of Directors adopted a resolution supporting legislation to repeal proposed IRS regulations on recordkeeping for farmer and company-owned vehicles. The Board of Directors felt the regulations, as initially proposed by the Internal Revenue Service, were onerous, time consuming, costly and inefficient.

Since the adoption of that resolution the Internal Revenue Service has issued new interim proposed regulations that purport to provide a "safe harbor" for qualifying farmers to consider 70 percent of a automobile's use and 80 percent of a truck's use as business use. However, the so-called safe harbor provision for farmers is deficient in several respects.

First, it would not include most family farmers. The proposed regulations provide that a person receiving 70 percent of his gross income from farming may qualify for the safe harbor provision. However, only 12 percent or approximately 284,000 of America's 2,086,000 farmers are currently able to meet such a test. This safe harbor excludes those farmers hardest hit by the failing agricultural economy -- the family farmers with sales between $40,000 to $100,000.*

Second, there are no provisions protecting persons who mistakenly rely on the safe harbor provision and later find they do not qualify. The uncertainties inherent in farming, such as fluctuating prices and intemperate weather, make it impossible to assure that a farmer who qualifies for the safe harbor one year will be able to do so the next. A farmer who had mistakenly relied on the safe harbor provision, and thus not kept contemporaneous records, would lose his otherwise legitimate vehicle business deduction if his farm income happened to fall below 70 percent of his gross.

*Economic Research Service, Economic Indicators of the Farming Sector: Income and Balance Sheet Statistics, 1983, ECIFS 3-3, September 1984, pp. 80,89,90.

Third, farm employees should be exempt from the imputation of commuting income. Under the current regulations, farm employees who drive an employer's vehicle to and from home will have the commuting value of the vehicle imputed to them as a taxable fringe benefit subject to withholding. This commuting rule is unrealistic and unmanageable when applied to farm employees and merely adds to burdensome recordkeeping already required in farming operations.

In addition, under the new interim proposed regulations, the provisions for company-owned vehicles remain as burdensome and unrealistic as the original proposal. NCFC feels the proposed regulations do not go far enough in simplifying the recordkeeping requirements for other vehicles used for business purposes. In fact, it seems ironic that at the same time a myriad of bills to simplify the Tax Code have been introduced, the Internal Revenue Service would issue interim regulations to require such burdensome and unnecessary documentation.

Finally, the effective date of any changes in the regulations should not occur until the tax year following the year in which the regulations are finalized. Until such time, any method of recordkeeping which satisfies the pre-1984 statutory requirements should be permitted. In the meantime, taxpayers should not be expected to comply with unnecessarily burdensome and universally unpopular regulations that have not been the subject of full scale public hearings.

In summary, unless the proposed regulations are significantly amended to remove burdensome recordkeeping requirements and provide a reasonable framework for compliance, NCFC continues to support legislation seeking their complete repeal.

Statement of the Texas Cattle Feeders Association

The Texas Cattle Feeders Association appreciates the opportunity to present its views on the issue of "contemporaneous" record keeping. We wish to address our concern to the regulations promulgated in Internal Revenue Code, Section 280F which attempt to implement Section 179(b) of the Deficit Reduction Act of 1984.

The Texas Cattle Feeders Association represents most of the cattle feeders in Texas, Oklahoma and New Mexico, an area that in 1984 marketed over 5 million head--approximately 25 percent of all the fed cattle in the United States.

We feel that the record keeping requirements for automobiles and trucks are burdensome and in many situations will have the unfortunate result of denying legitimate business deductions. Cattle feeders and ranchers are concerned and confused about the IRS regulations that require "contemporaneous" records and daily logs of business/personal use of

company-owned vehicles. We are concerned, because this would be a real burden--if not an impossibility--for employees who are not accustomed to keeping records, who don't even carry a pencil and some of whom can hardly read or write. Many of the vehicles driven by our members and their employees are used more than 80 percent of the time for work-related purposes. These vehicles often are used several times daily by different operators to conduct business.

The interpretation of "contemporaneous" record keeping to mean the maintenance of a daily log or journal of all business uses goes beyond what is fair and reasonable to justify deductions. We feel that in view of the mandate specifically provided in the Paperwork Reduction Act, any regulatory effort in this area is inconsistent and onerous at best. These efforts will fail to significantly reduce any abuses existing under present guidelines and may well prove a further disincentive for compliance in a broad number of areas. We strongly believe that the paperwork burden created by this provision will be counterproductive. Failure of an individual to record a business trip may also cause that taxpayer to forgo a legal deduction to which he would otherwise be entitled.

Congressional hearings held earlier this year substantiate the belief that the IRS has clearly gone too far in their interpretation of congressional intent for these requirements. Although the IRS claims to have documented massive abuse, it should be noted that they ignored repeated congressional requests during development of the legislation to reveal the evidence of "widespread abuses." Any evidence finally supplied at this late date would seem to us to be somewhat suspect.

We are not satisfied, to any degree, that the modifications of the regulations recently published by the Treasury Department will remedy our primary concerns of excessive paperwork. The modified regulations fail to resolve the difficulties generated by these provisions. They simply carve out narrow exceptions to the requirements and in some cases further confuse the issue.

We feel that nothing short of repeal of the "contemporaneous" record keeping requirements will be sufficient to resolve the practical problems created by Section 179(b). We urge a return to the pre-1985 language requiring "adequate" records.

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association (or "NRMA") is the nation's largest trade association for the general merchandise retail industry. Its members operate approximately 40,000 leading department, chain, independent and specialty stores in the United States. Annual sales of NRMA members exceed $150 billion and member firms employ more than 3 million workers. Accordingly, changes in the tax law which affect the day-to-day operations of U.S. businesses and the employer-employee relationship are of major consequence to NRMA.

The Tax Reform Act of 1984 (and the regulations which have been promulgated pursuant to that legislation) contains two changes from prior law regarding use of company owned automobiles: (1) a new contemporaneous record-keeping requirement to substantiate tax benefits claimed by businesses with respect to company vehicles and (2) a new withholding requirement. Several sets of recently issued regulations carry out the mandate of these new rules by dramatically increasing the record-keeping and withholding tax compliance burdens that are imposed on employers. The NRMA believes that these new requirements are so unnecessarily burdensome that they should be repealed.

1. Background

Prior to the Tax Reform Act of 1984, the tax law permitted a taxpayer to substantiate business use of a

company vehicle with "adequate records or by sufficient evidence corroborating his own statement." Generally, taxpayers were dealt with on a case-by-case basis in what was treated as, essentially, an audit issue. The national treasury was protected by the discretion of revenue agents to examine and pass on the adequacy of each taxpayer's records.

With the Tax Reform Act of 1984, Congress replaced the "fact and circumstances" substantiation requirement with a new "adequate contemporaneous records" requirement. This seemingly small change, which took literally just a few words to enact, has not been so simple to implement.

To date, the IRS has issued three sets of regulations, comprising some 50 pages, which affect the tax treatment of company vehicles by employees. Because of cross references, defined terms and amendments, the sets must be read together to fully understand their use and application. It has become increasingly apparent that the brevity of the statutory enactment cannot be duplicated on implementation.

2. Problems Presented By The New Rules

NRMA has identified a number of problems presented by the new rules. These problems are discussed below.

a. Record-Keeping Burden.

Under the new rules, no deductions or credits with respect to vehicles are allowed for tax purposes unless substantiated by "adequate contemporaneous records." To satisfy this requirement, a log, diary or journal must be maintained with respect to each vehicle and a separate entry must be made at or near the time of each use of the vehicle. The entry should include the date, name of the user, number of miles and purpose of the use. For vehicles owned by the business and used by an employee, the business may use and rely upon records kept by the employee.

The cost of putting the necessary record-keeping system into operation will be extraordinarily burdensome. It will be necessary for the business to obtain log books which would have to be in the proper format to record the information required to be provided by the user of the vehicle. These log books would be distinct from other business records which are kept. Prior to the new rules, it has generally been possible for business to satisfy the tax law substantiation requirements with records that the business would maintain in any event. A good example is the credit card slips which are used to substantiate business travel on airplanes. The new rules depart from this past practice by obligating the business to amass and maintain a library of information that the business does not otherwise need. Thus, the new rules will create a costly record-keeping and record-maintenance burden for businesses (and may also increase the burden on examining agents).

Beyond the out-of-pocket costs, the new rules interject a great deal of inconvenience in normal business travel. The effect of the rules is to force every employee to become a bookkeeper. In the past, the tax system has in general functioned efficiently because the record-keeping requirements of the system have been transferred to individuals specially trained and prepared to handle record-keeping. The new rules effectively mandate that people who earn their living through salesmanship, manual labor or supervising must become bookkeepers. Many individuals will simply not be able to adjust to the amount of paperwork required of them by the new rules.

Some businesses will deal with the new rules by requiring employees to furnish their own cars for use in their work. In that way, businesses will not have to account

for the business or non-business use of automobiles -- the problem will be transferred to the employees. Not only will this impair the employability of certain employees, but it will also create substantial administrative inconvenience for the Internal Revenue Service itself. Where the automobiles are owned by the business, the Internal Revenue Service can monitor the abuse of non-business use of automobiles through an audit of the business whose employees have been using the automobiles for personal use. If the new rules encourage business to require employees to use their own cars, the Internal Revenue Service will be forced to audit each individual employee to track non-business use of automobiles.

b. Negative Impact on Employee Relations

The withholding and fringe benefits regulations have been amended to encompass the new contemporaneous substantiation requirement. These changes will require businesses to increase the withholding taxes of well-meaning employees whose automobile use records, while satisfying the facts and circumstances test of prior law, do not meet the stringent contemporaneous requirement of the new rules. Furthermore, even in cases where the substantiation is adequate, the employee may, nonetheless, be forced to recognize income under the fringe benefit rules (with concomitant withholding by the employer) in instances that, as a matter of fairness and logic, should be tax neutral. For example, it appears that if an employee of a retailer were to drive a company vehicle home so that he could be prepared to make early morning deliveries the next day without first traveling to the employer's premises, the regulations would treat that drive home as personal use that could subject the employee to taxation; this will be perceived as unfair where the sole motive for driving the vehicle home is to accommodate busi-

ness needs. As a result, the effect of the new rules will be to create unproductive conflicts between the business and its employees, frustrating the creation of a cooperative business atmosphere. The complications of withholding will further increase the tendency of businesses to require employees to furnish their own automobiles creating the undesirable results discussed above.

c. Implementation Problems for Businesses

The new rules would be burdensome for both large and small businesses that do not have an established bureaucracy for handling the record-keeping rules. Businesses not currently possessing the manpower and supervisory staff necessary to administer these complex rules would be forced to implement such administrative structures, thereby incurring additional operating costs which must inevitably be passed along to the consumer. Moreover, beyond the problem of cost, the proposed regulations are long and complex. The numerous cross-references and defined terms and the existence of multiple sets make understanding the regulations an extremely difficult task. To illustrate, the proposed regulations provide that

> "a taxpayer may satisfy the 'adequate contemporaneous record' requirement of Section 274(d)(4) and § 1.274-5T(a) in the manner prescribed in paragraph (d)(3) of this section with respect to the use of a 'road vehicle' (as defined in paragraph (g)(1) of this section) during a period of time if for that period the requirements of paragraph (d)(2) of this section are satisfied." [Paragraph (d)(2) lists seven requirements, including] "the employee required to use the road vehicle for commuting is not an officer or a one-percent owner of the employer." [The regulations explain that] "for purposes of determining who is a one-percent owner, any individual who owns (or is considered as owning) more than one percent of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c) or (m)."

Thus, the complex and highly technical nature of the regulations make it extremely difficult for businesses to navigate through such a morass without incurring additional expenses for outside expertise.

d. Continuing Inequities

Despite the length and complexities of the regulations, some horizontal inequities are still apparent. For example, assume both A and B work for Company X and are provided with similar company vehicles which have an Annual Lease Value of $3,000. A drives 20,000 business miles while B drives only 10,000 business miles. Each also drives 5,000 non-business miles. In A's case the ratio of personal miles to total miles is 20%. In B's case, the ratio is 33%. Thus, despite the fact that each has had the same non-business benefit from the vehicle (i.e., 5,000 personal miles), under the regulations, the value of the benefit received by A would equal $600 (20% of $3,000) while the value of the benefit received by B would equal $1,000 (33% of $3,000). As a result, B's withholding taxes in respect of this non-cash income would substantially exceed A's withholding taxes in respect of the same item.

3. Conclusion

In attempting to clarify the tax treatment of the use of company vehicles by employees, Congress enacted a simple change in the statute. Despite the best efforts of the IRS to implement the new provisions, however, the length and complexity of the regulations demonstrate that clarity has not been achieved. Instead, additional record-keeping and withholding burdens have been placed on both employers and employees. Furthermore, inequities remain.

For these reasons, NRMA urges the repeal of the recently enacted amendment to the substantiation requirement.

The adequacy of substantiation of use of company vehicles by employees would then be an audit matter, to be determined on a case-by-case basis in the sound discretion of the auditing revenue agent. Adopting this course of action would eliminate what NRMA believes to be excessive burdens on business without jeopardizing taxpayer compliance or effective tax administration.

Statement of the National Soft Drink Association

The National Soft Drink Association submits these comments for the hearing record of the Senate Appropriation's Subcommittee on Treasury, Postal Service, and General Government during its consideration of the Department of Treasury's record keeping requirements of the Tax Reform Act of 1984. NSDA is the national trade association which represents the soft drink industry in the United States. The industry is comprised of approximately 1500 soft drink manufacturers throughout the United States, of which almost 77% are active members of the Association. These members account for more than 90% of the soft drink production in the country. In addition, the vast majority of soft drink franchise companies which manufacture concentrate syrup, many of whom also own soft drink manufacturing plants, are associate members of the Association.

The Association welcomes this opportunity to present its views on the Department of Treasury's revised temporary and proposed regulations issued as a result of the passage of the Tax Reform Act of 1984. The soft drink industry is one of the largest business users of delivery trucks, transports, vans, pick-ups, and automobiles in the country. These vehicles are used in the production, sales, and distribution of soft drinks. The proposed regulations,

and the subsequent changes announced less than a month ago, impact the productivity of our industry's operations, and hence its ability to serve the consumer in the most efficient, least costly manner possible.

These comments will refer to both sets of regulations and the business practices of the industry. While the Service has attempted to clarify as well as to decreease the burdens imposed on taxpayers, by issuing the second set of regulations, the goal will not be accomplished for many, including a significant number in our industry. Some taxpayers are either not accommodated within the narrowly defined set of criteria of the second set of proposed regulations or will opt not to use the "safeharbor" percentages of use.

In summary, it is our industry's position that the "contemporaneous record keeping provisions" of the law should be repealed. Failure to do so will subject taxpayers to a continuation of the process in which two sets of complex temporary and proposed regulations already have been published within four months with yet a third to be published following the Service's hearings in mid-April. Absent this Congressional action, this process has and will continue to result in undermining the credibility of the Service while subjecting taxpayers to uncertainty, increased paperwork, and added costs of doing business. A repeal would allow the Congress the opportunity to assess the scope and nature of the perceived abuses of the Tax Code in these areas and to formulate appropriate remedies.

The Soft Drink Industry and Its Use of Vehicles

Our industry puts on the road some 50,000 vehicles daily to service a variety of retail outlets throughout

the United States. Over the years these vehicles have included delivery trucks, transports, vans, pick-ups, automobiles, dog sleds, boats, and bicycles. These varieties of delivery vehicles and their many uses are part of a complex delivery system in which soft drink manufacturers deliver product in franchised territories. Those territories and the delivery systems developed by soft drink manufacturers vary in both size and demand. The needs, for example, in downtown Manhattan retail outlets are far different from the small country stores in western Oregon. The Service's attempt to impose additional complex record keeping requirements that these manufacturers must follow to qualify for tax credits and deductions has and will continue to result in taxpayer protests and a belief that once again, government does not understand that which it seeks to regulate.

Prior to the issuance of the new regulations on February 20, NSDA had received from a sampling of its membership analyses of the costs to comply with the original proposals. These samples, from 13 states, range from operations using as few as 15 vehicles to as many as 700. While the number of vehicles subject to the log keeping requirements varied, every operation was impacted at costs ranging from $2,000 to $500,000.

A typical analysis of the administrative burden of the record keeping requirements for a large plant produced the following:

> The total number of automobiles is 200, each making an average of 15 stops a day. Daily log entries consume 1/2 hour resulting in 500 hours per week for record keeping. The driver's time is worth, conservatively, at least $10 per hour resulting in a cost of $5,000 weekly or $250,000 annually. Added to this would be the cost of record maintenance of the logs in the office, as well as accountants' time, both of which will vary with the individual plant.

In its revised proposed regulations the Service has attempted to provide relief. Generally, the record keeping requirements will be either decreased or waived if a taxpayer meets very specific criteria. The number of vehicles subject to such revised regulations will vary with individual soft drink manufacturers. However, the fact that any number, large or small, is impacted is wrong if in fact they were not the abusers that Congress sought to curb with passage of the Tax Reform Act of 1984.

In the revisions, one exemption from the log requirement includes a five-part test. The first requirement is that the vehicle must remain on the employer's premises when not used in the business. In the soft drink industry a variety of vehicles are, as a matter of sound business practice, sent home with the employees.

Some employees are on 24-hour call to respond quickly to retail customers who need or want service. Such service needs range from more product at a fountain outlet to rearranging displays in large grocery chains to repairing vending machines. Vehicles may be sent home because insurance costs are decreased. Other operations do not have storage space for their vehicles. Still others have a sound business practice of making calls at the start of the business day without the necessity of reporting to the plant. At times an employee will audit a display in a 24-hour grocery at 5:00 a.m. or earlier.

The related exemption apparently intended to address the practices outlined above also does not adequately address the problem. This second exemption contains a seven-part test including limitations on "de minimus" use; a stipulation that the employee not be an officer or a one percent

owner of the employer; and a requirement that $3.00 a day be charged to the employee for such use.

Such requirements are arbitrary and inconsistent with good business practices. It is not uncommon, especially in small businesses, for officers of companies to be available to respond to business requirements in exactly the manner in which non-officers are on 24-hour call. Moreover, the introduction of a new commuting charge results in legitimate business practices being burdened with added costs. It is unfair to affected employees resulting in morale problems and may require employers to alter business practices at an ultimate cost to the consumer. We do not know how such alteration would affect those manufacturers who have union contracts.

Another exemption applies to employees who visit multiple business locations. It provides for "safeharbor" percentages to allow the taxpayers to satisfy the record keeping provisions by opting for an 80/20 or 70/30 business/personal use ratio depending upon the type of vehicle. Again these are arbitrary choices that will result in an unnecessary record keeping burden on those who use their vehicles in excess of the percentages.

In announcing the revised regulations, the Service simultaneously announced hearings in mid-April. As part of that process, it has invited further comments, for example, on the types of trucks and vans to be excluded from coverage under the new regulations. It is obvious that yet another set of regulations will be forthcoming, at a cost to government and to taxpayers.

NSDA's review of this regulatory process leads us to the conclusion that the only reasonable action which Congress can pursue is a repeal of the contemporaneous provision. At

that time Congress should then investigate the abuses that the availability of such credits and deductions have created. Such analysis will allow the Congress the opportunity to initiate more appropriate Tax Code revisions.

While these comments have been directed toward the record keeping requirements, we also believe that at some appropriate time the Committee should also review other issues raised by these proposals. These include, for example, the scope of coverage of the regulations, the policy of imputing income to employees performing duties for legitimate business purposes, and the method of valuation of an employer provided automobile. These issues, in addition to the problems generated by the record keeping provisions, lead to the conclusion that more drafting will only produce more complexity, far beyond the abuses addressed.

Statement of the Interstate Carriers Conference

This statement is submitted for the record in the Subcommittee's hearing on vehicle recordkeeping requirements by the Interstate Carriers Conference, an affiliate of the American Trucking Associations representing some 700 common and contract trucking companies throughout the United States. These carriers vary widely, about 30 percent having revenues of less than $1 million and 20 percent having more than $10 million. No other group of carriers makes more extensive use of the services of owner-operators, individuals owning their own trucks.

The Interstate Carriers Conference strongly urges repeal of the contemporaneous recordkeeping requirement in Section 274 of the Internal Revenue Code, which, as reduced to proposed regulations by the Internal Revenue Service, is a regulatory paperwork nightmare for trucking.

Heavy trucks should not be covered by the proposed recordkeeping regulations for two basic reasons--the likelihood of tax evasion is infinitesimal and the proposed IRS regulations are so complex and confusing that truck operators would run a high risk of adverse tax consequences if the regulations are not painstakingly complied with.

The probability of tax evasion is minuscule because it simply is not good business to use a $70,000 truck for anything other than its sole purpose--to haul freight.

As far as employees driving for trucking companies are concerned, the disincentives to permitting them to commute or run errands in company trucks are obvious--when the employee is using the vehicle the liability attaches to the employer.

With respect to the thousands of individual owner-operators, does the IRS really believe shopping or vacation trips are commonplace with hard-to-park 20,000-pound vehicles that get an average of five miles to the gallon of diesel (currently costing 126.7 cents* per gallon)? To the contrary, the owner-operator is well aware that any non-business mileage will come out of his or her pocket in accelerated maintenance and decreased trade-in value.

The proposed IRS regulations show a dismaying unawareness of how owner-operators conduct their business. The regulations would appear to consider that business use of a truck would begin and end only at the business premises of the employer. The reality is that the actual place of business of almost all owner-operators is their home, and the business use of the truck commences when the owner-operator leaves his office at home to pick up a load. There is no commuting, as commonly defined. Many owner-operators, in fact, perform a cycle of pickups and deliveries around the country for weeks at a time, seldom reporting in at the employer's place of business.

---

* Interstate Commerce Commission weekly diesel fuel price survey for the week of February 18, 1985, which measures nationwide average, full-service cash sales, including taxes.

It should be obvious that the potential for personal use of heavy trucks is so minimal there is no justification for the burdensome recordkeeping requirements contained in the proposed regulations. Yet, if an owner-operator did not keep detailed mileage records, the regulations would allow that individual to treat only 80 percent of the year's total mileage as business, with the other 20 percent lost in tax benefits on the vehicle.

As for the second point--the adverse tax consequences of not fully complying with the pages and pages of the proposed regulations--the only foolproof way of demonstrating that no personal use of a vehicle has occurred is by maintaining a current log showing that all use was business. In the employer-employee situation, the regulations provide that the employer satisfies its requirement to maintain records by relying on the records submitted by the employee unless the employer knows or has reason to know those records are inaccurate. But in the case of owner-operators, the regulations treat them as sole proprietors, that is, as both employer and employee.

For the reasons stated, the Interstate Carriers Conference sees no justification from a tax liability standpoint for trucks to be included in the regulations, which, as written, will unnecessarily subject thousands of individual truckers and employers to possible adverse tax consequences plus additional costs of doing business.

STATEMENT OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (EEI) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

EEI is the association of electric companies. Its members serve 96 percent of all customers served by the investor-owned segment of the industry. They generate approximately 75 percent

of all electricity in the country and service 73 percent of all ultimate customers in the nation.

Electric utilities employ large fleets of vehicles in providing service to customers, and we therefore have a keen interest in the Proposed and Temporary Regulations. As originally issued, the regulations would have required burdensome recordkeeping for hundreds of thousands of utility vehicles that are used exclusively for business purposes. The amended regulations eliminate the requirement to keep these needless records and, to this extent, we believe they are more in keeping with the intent of Congress and are fairer to utilities and the many other taxpayers who use vehicles predominately for business purposes.

Our principal concern with the amended regulations is that they require the imputation of income to employees of utilities who have "on-call" emergency assignments and, as part of their duties, are required to take company vehicles to their homes each day. Most utility companies require certain employees to be "on-call" twenty-four hours a day, seven days a week to respond to emergency situations such as power outages. These employees may be required as a condition of employment to take company vehicles home in order to provide the fastest possible response to emergencies occurring during other than normal working hours.

We believe the regulations should expressly provide that employees of companies which provide essential public services, such as the furnishing of electricity, who are required to take company vehicles home for the purpose of responding to emergencies, are not engaged in commuting and no income should be imputed to them for so doing. We urge that the regulations be further amended to this end. If the necessary amendment is not made, we urge the support of legislation that will accomplish this result.

We are also concerned with several somewhat technical aspects of the amended regulations. The first of these is the requirement

of Section 31.3501(a)-1T Q/A-8 that all imputed income be treated as paid on or before the last day of the calendar quarter in which the benefit is provided. Without the use of estimates or the ability to account for activity occurring in one quarter in the subsequent quarter, it will be administratively impossible for taxpayers who own large numbers of vehicles that are partially used by employees for personal purposes to fully comply with this requirement. We strongly recommend that the regulations be amended to permit employee benefits received in one quarter to be imputed as income in the following quarter. This would provide a minimum period of time for most taxpayers to accurately account for the benefits. Any effect of an accounting lag on employees or the Treasury would be negligible because, other than the first year, each year would cover twelve months of activity.

The amended regulations (Section 1.61-2T Q/A 20) contain a special rule that taxpayers may use to value employer-provided road vehicles which are not available for personal use other than commuting. One of the conditions for use of the special rule is that the employee not be an officer of the employer. No definition of the term "officer" is provided in the regulations, and it is unclear whether the rule could be used with respect to junior officers, such as assistant treasurers, assistant vice presidents, assistant secretaries, etc. We believe the regulations should be amended to provide that the term "officer" be defined so as to exclude assistant officers from its meaning.

Finally, as presently proposed, the regulations do not adequately and fairly address situations in which motor pools of standardized vehicles are maintained, any one of which can be used at random for business or non-business purposes by an employee within specified classifications. For these situations, the regulations should be amended to provide income imputation based upon the average of the fair market values of the vehicles in the pool and on the average of the non-business uses of the vehicles in the pool.

Thank you for the opportunity to present our views on these important regulations.

LETTER FROM JOHN W. NERLINGER, PRESIDENT, AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION

March 4, 1985

The Honorable James Abdnor, Chairman
Senate Appropriations Subcommittee on
Treasury, Postal Service, and General Government
U.S. Senate
188 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Abdnor:

On behalf of the Automotive Service Industry Association, I want to express our appreciation to your Subcommittee for holding these timely hearings and for the opportunity to express the views of the automotive aftermarket on the issue of tax recordkeeping requirements for business use of motor vehicles.

The Automotive Service Industry Association (ASIA) is the automotive world's largest and most comprehensive organization. Its membership encompasses more than 8,500 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturers' representatives, manufacturers and remanufacturers of automotive replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

The recordkeeping rules for deductible motor vehicle expenses promulgated by the Internal Revenue Service impose time consuming requirements which are counter-productive, cumbersome and unnecessary. ASIA voiced its strong objections to IRS when the rules were originally proposed, pointing out that there are numerous other means by which business use can be established that would not present such an undue burden. The costs and burdens imposed by the IRS rules are disproportionate to any tax revenue benefit that can conceivably result from impelementation of the rules.

The response of the automotive aftermarket industry has been overwhelming. Members of our industry have joined in the strong objections voiced by every taxpayer segment, that the IRS rules are self defeating and create a nightmare of paperwork which substantially interferes with the conduct of business.

The Internal Revenue Service has taken some action to make the rules less onerous, but the revisions to the rules result in only partial relief and do not solve the problem. ASIA is pleased that an attempt has been made to alleviate the problem but it continues to believe that a general repeal of the appropriate sections of the law is absolutely necessary.

It is the law itself that is the problem. The law specifically requires that a taxpayer substantiate a business use deduction by "adequate, contemporaneous records." Prior law required substantiation by adequate records or by sufficient corroborative evidence, a much more reasonable requirement.

The problem is not going to disappear unless Congress acts to repeal the adequate contemporaneous recordkeeping requirements for business use of motor vehicles. The IRS may issue new rules which reduce the harshness of this particular provision of the law, but these new rules may also be reconsidered at a later date and even that slight reduction of harshness may be eliminated.

Legislative action is both appropriate and necessary. The confusion and uncertainty in the business community created by the inclusion of the contemporaneous language in the Internal Revenue Code must be reversed. ASIA strongly urges immediate action to repeal the adequate contemporaneous recordkeeping requirements in the law.

We respectfully request that this letter be made a part of the hearing record and thank you for giving us this opportunity to express our views on this important matter.

Respectfully submitted,

John W. Nerlinger

John W. Nerlinger

STATEMENT OF THE INDEPENDENT AUTOMOTIVE SERVICE ASSOCIATION

The Independent Automotive Service Association (IASA) headquartered in Bedford, Texas is comprised of approximately 5,000 independent mechanical and collision repair facilities. I want to express our appreciation to your Subcommittee for holding these timely hearings and for the opportunity to express the views of the automotive repair industry on the issue of tax recordkeeping requirements for business use of motor vehicles.

There has been heated response from the repair industry concerning the regulations as issued and this association has joined with many others in voicing our opposition to the IRS rule which creates a nightmare of paperwork and which interferes with the normal conduct of business.

The recordkeeping rules for deductible motor vehicle expenses promulgated by the Internal Revenue Service impose time consuming requirements which are counter-productive, cumbersome and unnecessary. IASA submitted comments to IRS when the rules were originally proposed, pointing out that there are numerous other means by which business use can be established that would not present such an undue burden. The costs and burdens imposed by the IRS rules are disproportionate to any tax revenue benefit that can conceivably result from impelementation of the rules.

The Internal Revenue Service actions to make the rules less onerous, resulted in only partial relief to the problem and did not solve it. We are pleased that an attempt has been made to alleviate the onerous recordkeeping but continue to believe that the only answer is repeal of the appropriate sections of the law.

Many in our industry use light trucks and vans given the nature of their businesses and often have people on call 24 hours a day. Still others keep backup vehicles (with or without logos) for use in deliveries, emergencies and overload situations. Given the contemporaneous recordkeeping requirements a paperwork nightmare faces them. If the intent of the law was to halt the abuse of "luxury" cars then the law should address that problem. The IRS solution certainly goes "overboard" in its effort to halt the practices of a few.

Because the law requires "adequate contemporaaneous recordkeeping" it is the law that must be changed. The adequate substantiation language of prior law was much more reasonable, and could be complied with reasonably.

IASA urges you to act to repeal these onerous provisions to restore some certainty to the Internal Revenue Code. The confusion and uncertainty which faces the business community created by the inclusion of the contemporaneous language must be eliminated. We strongly urge repeal of the adequate contemporaneous recordkeeping requirements in the law.

IASA appreciates the opportunity to submit these comments and requests that they be made a part of the hearing record.

STATEMENT OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association, Inc. (NCTA) is the principal national trade association representing cable television system operators in the United States. Its members operate more than 2,000 cable systems nationwide. NCTA's members will be directly affected by the above-referenced revised interim income tax regulations promulgated by the Internal Revenue Service (IRS). NCTA thus submits this written statement for the printed record of the hearing which sets forth its views on certain of the revised interim rules.

NCTA applauds the IRS's recent amendments to the temporary regulations in sections 274 and 280F of the Internal Revenue Code (Code). 50 Fed. Reg. 7,071 (Feb. 20, 1985), amending regulations published in 49 Fed. Reg. 42,743 (Oct. 24, 1984). The new special rules eliminating or reducing the recordkeeping required to satisfy section 274(d)(4) of the Code are a welcome step in the right direction. But while these revisions will help to ease the onerous paperwork burdens imposed by the IRS regulations, they do not go far enough. Specifically, NCTA questions the requirement that any use of a commercial vehicle for commuting purposes must involve the assessment of imputed income.

Under section 1.274-6T(2)(vii) of the revised temporary regulations, imputed income must be assessed against employees who use business vehicles for commuting purposes when the use is solely at the employer's request. NCTA supports adoption of the regulations' special rule that eliminates the recordkeeping requirement for vehicles used in this manner; and we can agree with the requirement that the employer should allow no other personal use of the vehicle by employees (other than de minimis personal use). See Sec. 1.274-6T(2). The employer should not in every case, however, have to assess income to the employee for each day the vehicle is used for commuting. In the cable industry, many companies require certain workers as a condition of employment to keep company trucks or vans continually available for emergency use. But the temporary regulations fail altogether to account for instances in which the commercial vehicle, while used for travel to and from an employee's residence, remains on-call, as does the employee, at the employer's behest. We submit that the imputing of income to employees for the use of business vehicles in these circumstances is clearly unfair and unwarranted.

A brief explanation of the nature of the cable industry and the kinds of vehicles and activities that are involved here will plainly demonstrate why an exception to the imputed income requirement should be granted. A cable television system is a facility which delivers electronic entertainment and information to subscribing households via coaxial cables strung along public streets and rights-of-way. There are more than 6,400 cable systems in the United States which pass almost 60 million homes with hundreds of thousands of miles of cable and other equipment. Nearly 35 million television households presently subscribe to cable on a monthly basis; by the end of 1985, the number of subscribers should exceed 40 million.

While cable in function and by statute is not a public utility, it can be compared to telephone, electricity and other utility services in the sense that it is provided to individual homes, and its customers expect and deserve uninterrupted service of high technical quality. In order to provide such service, cable operators in the local community must keep repair equipment available on a 24-hour, 7 days a week basis. Our industry knows only too well that people are intolerant of power outages and

technical interference, particularly because, unlike free over-the-air broadcast signals, subscribers must pay a monthly fee for cable service. They want their cable service to work just like a light switch -- when the TV set is turned on, they expect automatic service of perfect quality.

The only manner by which cable operators can maintain the capability to handle emergency repair calls is by requiring certain employees to assume off-hours responsibility on an on-call, standby basis. In order to restore service to subscribers as quickly as possible, employees typically will be required to take company equipped and owned vehicles to their residences, thereby maintaining their availability to handle emergency situations that may arise after regular business hours. The requirement may even be stipulated in employment or union contracts, or mandated by the local franchising authority. Most importantly, cable employees use company vehicles for commuting only when assigned such duty, and they are not used for personal purposes (other than the allowed de minimis use). When not required to use these vehicles for commuting, the employee will either use his own car or public transportation to travel to and from work, and can thus choose for himself what amount he wishes to spend in commuting costs.

The kinds of vehicles used for this purpose by the cable industry and the activities for which they must be made available further support an exemption from the imputed income requirement. First, most, if not all, of these vehicles bear a company logo and thus are clearly identifiable as commercial, not personal, vehicles. Second, they are generally vans and light weight trucks, not automobiles. And while some of these vehicles may be used simply to provide a means of transportation to allow an employee to get to the site of an emergency, many others are outfitted with special equipment that may be needed for making the necessary repairs. These latter vehicles may contain equipment for, among other things, restoring power outages, climbing to power lines, testing individual subscriber hardware or general system plant, and replacing defective parts. It thus should be readily apparent that the commercial vehicles for which the cable industry seeks an exception are entirely dissimilar from vehicles that a company may provide for commuting purposes purely as a benefit to the employee.

NCTA submits that there is a clear distinction between a car provided for the purpose of commuting at the employer's request, and the required use of a van or light truck that remains on-call, along with the employee, on a 24-hour basis. Without the full-time availability of these vehicles, the cable industry could not possibly respond with the immediacy necessary to act on emergency situations as they develop. Subscribers who lose service in a power failure or experience technical difficulty do not want to be told to wait until morning for their television picture to be restored, nor does the industry desire to disserve their subscribers by operating their business in this manner. But the employee who is required to assume standby duty in order to maintain full-time cable service should not have to bear a financial burden for performing this legitimate and necessary function. To impute income to an employee for use of a company car in commuting, <u>without taking into account the circumstances surrounding such use</u>, is grossly inequitable. We therefore propose that the IRS eliminate its requirement under section 1.274-6T(2)(vii) that income be imputed when a vehicle is required to be used for commuting purposes. If it is determined that the requirement should be retained, the regulation at the very least should be amended to exempt from the imputation of

income those vehicles used directly in the business of providing cable television services.

As a general matter, NCTA questions whether there is a need for any of the recordkeeping requirements of section 274, particularly in light of the substantial burden they will impose on legitimate business operations. While we endorse the exception from recordkeeping for business vehicles kept at the employer's business premises and for those vehicles required to be used for commuting, we believe that the bookkeeping requirements that have been retained for all other uses of business vehicles are also unfair. NCTA submits that repeal of the rule requiring "adequate contemporaneous records" to be kept for automobiles and certain other vehicles is far preferable to endorsing the kinds of onerous requirements that have emanated from the IRS temporary regulations.

LETTER FROM RONALD A. PEARLMAN, ASSISTANT SECRETARY (TAX POLICY), DEPARTMENT OF THE TREASURY

MAR [illegible] 1985

Dear Senator Abdnor:

Thank you for your letter of February 1 regarding the requirement that taxpayers substantiate business use of automobiles and other vehicles.

The Internal Revenue Service issued revised regulations under section 274(d) of the Internal Revenue Code on February 15 modifying the generally applicable recordkeeping requirement and providing several special rules which reduce or eliminate the recordkeeping requirement in certain circumstances. The special rules contained in the regulations are summarized in the press release issued by the Internal Revenue Service on January 25. Based on the comments we received on the recordkeeping requirement, we believe the modifications to the regulations provide workable rules for taxpayers to substantiate business use of vehicles.

You are concerned, however, that some businessmen will remain subject to the generally applicable recordkeeping requirement. Although this is certainly true, we remain willing to work to refine the regulations if other special rules are warranted. We welcome any suggestions or information you or your staff can offer which will aid in this process.

Sincerely,

Ron Pearlman

Ronald A. Pearlman
Assistant Secretary
(Tax Policy)

The Honorable
James Abdnor
United States Senate
Washington, D.C. 20510

Letter From Dennis R. Wraase, Comptroller, the Potomac Electric Power Co.

March 6, 1985

The Honorable James Abdnor
United States Senate
Senate Appropriations Committee
Treasury Subcommittee
Washington, D.C. 20510

Dear Senator Abdnor:

I am writing to you on behalf of the Potomac Electric Power Company (PEPCO). PEPCO provides retail electric service to 1.7 million people in a 643-square-mile service territory in the nation's capital area, which is composed of the District of Columbia, major portions of Prince George's and Montgomery Counties in Suburban Maryland, and a small portion of Arlington County, Virginia. To provide this service Pepco owns and operates a fleet of over 1,000 vehicles.

I respectfully request that the attached statement be included in the formal record of the hearing by the Senate Appropriations Subcommittee on Treasury, Postal Service and General Government regarding the Amended Proposed and Temporary (T.D. 8009) Treasury Department Regulations relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

Sincerely yours,

D R Wraase

Dennis R. Wraase
Comptroller

Statement of the Potomac Electric Power Co.

The Potomac Electric Power Company (PEPCO) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

PEPCO provides retail electric service to 1.7 million people in a 643-square-mile service territory in the nation's capital area, which is composed of the District of Columbia, major portions of Prince George's and Montgomery Counties in Suburban Maryland, and a small portion of Arlington County, Virginia. To provide this service PEPCO owns and operates a fleet of over 1,000 vehicles.

An electric utility, as well as other service companies, routinely maintains a fleet of vehicles solely for business use. One area the regulations do not address and on which the Internal Revenue Service has requested comments is the use of motor vehicles in pools or fleets. Many companies utilize motor vehicle pools of normally homogeneous vehicles for random daily business use.

These vehicles may also be used for non-business purposes during the evenings or on weekends which will necessitate adequate contemporaneous recordkeeping. An inherent problem of the motor vehicle pool concept is that an employee who may utilize a vehicle each day for commuting and/or personal use does not have control of the vehicle each business day while it is in the motor vehicle pool. Thus, the employee will be assigned a different vehicle

each evening since tens or hundreds of vehicles are housed centrally in a motor vehicle pool or fleet environment.

The regulations present particular problems in the areas of valuation of this fringe benefit and the recordkeeping requirements for such motor vehicle or fleet use. Under 1.61-2T Q/A-18, Q/A-19 and 1.132-1T Q/A-6, for each employee a separate computation would be required for each vehicle used from a pool of vehicles. Under 1.61-2T Q/A-18(b), four times the daily use would be imputed for each day's use since a different vehicle is normally used from the pool each day. This methodology clearly will not equitably impute the fringe benefit to an employee who is part of a motor vehicle pool environment.

The regulations should address this problem by first allowing the use of an average fair market value for vehicles drawn randomly from a motor vehicle pool. Thus, each vehicle's fair market value would be determined, the sum of all vehicles fair market values accumulated, and the average calculated.

Second, the recordkeeping requirements for a pool of vehicles should provide for an average business/personal use determination for the pool of vehicles. Thus, each employee would have income imputed based upon the average fair market value as well as the average use of the pool vehicles for personal or commuting purposes. The standard 5 1/2 cents per mile amount imputed for gasoline usage would be based upon actual commuting and personal miles driven by each individual employee. This methodology would allow each employee who uses a motor pool vehicle to have income imputed which more economically matches the value of the fringe benefit received.

The regulations should provide for specific identification as well as a statistical sampling basis for large fleets of 100 or more vehicles. Additionally, if the motor vehicles in the pools are controlled during the day for business use then the recordkeeping for this period of uninterrupted business use should be satisfied by the beginning and ending odometer reading during such period.

We thank you for the opportunity to provide comments on this very important matter.

LETTER FROM B.A. WHARTON, SECRETARY, IOWA PUBLIC SERVICE CO.

April 2, 1985

The Honorable James Abdnor
Chairman
Subcommittee on Treasury, Postal
Service and General Government
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Iowa Public Service Company (IPS) appreciates the opportunity to submit the attached statement for the record of the Subcommittee's hearing on the recent Treasury regulations relating to the employee benefit inclusion and recordkeeping requirements for road vehicles.

IPS is an investor-owned utility engaged in the business of generating, transmitting, distributing, and selling electric energy and distributing and selling natural gas in various communities and surrounding areas in the states of Iowa, South Dakota, and Nebraska. IPS provides service to about 125,000 gas customers and 162,000 electric customers in the three states.

Although we believe the amended regulations are more in keeping with the intent of Congress and are fairer to taxpayers who use vehicles predominately for business purposes, we believe the regulations should also (1) exempt the use of certain emergency vehicles from the employee benefit and recordkeeping requirements; (2) permit computation of income based on the least expensive fleet vehicle; and (3) modify the $3 per day rule for those employees living only a short distance from the employer.

Thank you for the opportunity to comment on these important regulations.

Sincerely,

B A Wharton

B. A. Wharton
Secretary

STATEMENT OF THE IOWA PUBLIC SERVICE CO.

Iowa Public Service Company (IPS) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

IPS is an investor-owned utility engaged in the business of generating, transmitting, distributing, and selling electric energy and distributing and selling natural gas in various communitites and surrounding areas in the states of Iowa, South Dakota, and Nebraska. IPS provides service to about 125,000 gas customers and 162,000 electric customers in the three states.

IPS uses a large fleet of vehicles in providing service to customers. As originally issued, the regulations would have required burdensome recordkeeping for nearly one hundred vehicles that are used exclusively for business purposes. The amended regulations eliminate the requirement to keep needless records and, to this extent, we believe they are more in keeping with the intent of Congress. Further modifications, however, will result in regulations that are fairer to utilities and other taxpayers who use vehicles predominately for business purposes.

Our principal concern with the amended regulations is the requirement to impute income to those employees who have "on-call" emergency assignments. IPS requires certain employees

to be "on-call" twenty-four hours a day, seven days a week to respond to emergency situations such as power outages. These employees are required, as a condition of employment, to take company vehicles home in order to provide the fastest possible response to emergencies that occur during other than normal working hours.

We believe the regulations should expressly provide that employees who are required to take company vehicles home for the purpose of responding to emergencies, are not engaged in commuting and no income should be imputed to them. We urge that the regulations be further amended to reflect this situation.

If the regulations are not amended to provide relief for those employees on emergency call, our concern is with computation of income based on the fair market value of the vehicle. Because of the need to respond to emergency assignments in adverse weather conditions some employees are required to drive a more expensive specially designed or four-wheel drive vehicle. The employee should not be penalized for this requirement. The special, more expensive vehicle provides benefit only for the employer not the employee. We believe the regulations should be amended to permit an alternate computation of income based on the fair market value of the least expensive fleet vehicle rather than the fair market value of the more expensive vehicle assigned to the employee.

Finally, we favor modification of the regulations to permit those employees who live only a few blocks from the employers business site to be excluded from income imputation. The $3 per day method discriminates against those employees having such a short commuting distance. We believe these employees should be exempted in the same manner as those employees having no personal use of vehicles other than de minimus personal use.

Thank you for the opportunity to present our views on these important regulations.

STATEMENT OF WALLACE F. TILLMAN, SENIOR REGULATORY COUNSEL, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

My name is Wallace F. Tillman. I am Senior Regulatory Counsel for the National Rural Electric Cooperative Association (NRECA), the national service organization of nearly 1,000 not-for-profit rural electric systems serving consumer owners in 46 states. These relatively small cooperatively-owned electric utilities covering most of the land mass of the United States are located in about 2,600 of the nation's 3,100 counties. They own and operate about 44% of the miles of distribution line, but serve less than 10% of the nation's population and have an average of fewer than 5 consumers per mile. The typical rural electric system has 1,870 miles of line and 7,400 consumers in portions of three counties.

Let me first express my appreciation and that of our member systems for the opportunity of providing a statement regarding Treasury's proposals which will adversely impact both the consumer owners of NRECA's member systems and the employees of those systems. As you, Mr. Chairman, and the members of this committee are more than aware due to the number of bills that have been introduced on this subject in response to a general outpouring of criticism, the Treasury proposals will adversely affect a large segment of the population. Many who are appearing here, can and will articulate as well or better than I, the arguments against the overly burdensome recordkeeping requirements set forth in the October 24, 1984 proposal and subsequent revisions.

Generally, NRECA's member systems are tax exempt under 501(c)(12) of the Code. There are, however, over twenty generation and transmission cooperatives that are subject to taxation because they have sales to nonmembers in excess of 15 percent of their total and have thus lost their exempt status. The burden placed on them will be similar to that on many businesses you have been hearing from and will hear from today. Additionally, rural electric cooperatives serve most of the farm population of America, and the record-keeping requirements of the Treasury proposal add one more burden to these rural electric consumer owners who are already reeling under the economic pressures threatening their very survival as farming and business entities.

The primary focus of my comments, therefore, will be on the Treasury proposal set forth in the Federal Register on January 7, 1985 entitled

"Taxation of Fringe Benefits; Proposed Rulemaking", and subsequent amendments and revisions published February 20, 1985. The focus of these proposals, effective January 1, 1985, is to establish the conditions under which an employee's use of a company vehicle will be considered as personal use and, therefore, taxable as a fringe benefit to that employee. As we read the proposals, there are many circumstances under which the employees of rural electric cooperatives in the performance of public service will find themselves subject to taxation for the use of vehicles required by the management of the cooperatives and essential to the integrity of the systems. We do not believe that, in targeting "fringe benefit" abuses, it was Congress' intent to go as far as the Treasury proposals.

A continuous and dependable supply of electricity is considered, by almost anyone's standards, a critical need. The loss of electricity under many circumstances is more than an inconvenience; it is life threatening. It is, therefore, a standard practice that all electric utilities require certain of their personnel to take home vehicles which are specially equipped to respond to supply outages. These vehicles vary from large trucks with bucket lifts, referred to as "bucket trucks" or "cherry pickers" to automobiles with two-way radios used to direct and supervise crews working in a variety of locations.

The need to have dispersed equipment is especially critical to the operation of rural electric cooperatives because of the large land areas they cover. By requiring that certain personnel take vehicles home, the cooperative is able to effectively place workmen throughout the service territory, thereby responding more quickly and readily to supply outages. As previously mentioned, the average cooperative covers 1870 miles of distribution lines for only 7,400 consumers. Needless to say, the high cost of covering these areas dictates that personnel be limited and used as effectively as possible. Requiring workers to drive long distances to the cooperatives' motor pool in the middle of the night, then drive to the scene of the problem, does not effectively remedy the problem nor wisely use personnel.

Comments are due April 8 on the Treasury proposals on fringe benefits and already NRECA has received copies of numerous letters opposing the position taken by Treasury. Consider some of the following statements:

From North Carolina Electric Membership Corporation, Raleigh, N.C.:

"...our EMCs have several concerns about the temporary IRS regulations.... These concerns center around the employees who, because of the critical need for prompt response to service outages, are required as a part of their duties to drive service vehicles or radio-equipped cars or station wagons home after work. By so doing, they are able to significantly shorten the emergency response time as members of a service crew." The regulations "have placed a severe and unjust penalty on employees in these situations, treating their mandatory company transportation (often a pain-in-the-neck to them) as added income."

From Carroll County REMC of Delphi, Indiana:

"This service that we provide is often life preserving (heart patients, people on respirators, people in nursing homes, etc.). For us to provide the quickest type of response, company vehicles are a must, which are of course equipped with radios."

From Morgan County Rural Electric Membership Corporation, Martinsville, Indiana:

"Certainly, if a line service crew takes the utility vehicle home while on call and that mileage would result in a tax liability under the present regulations, such action would probably result in the employees' refusal to take a vehicle home and would severely and unfairly impose a deterioration of service restoration for our consumers."

From Fayette Electric Cooperative, Inc. of La Grange, Texas:

"Certain employees "are provided company vehicles and are expected to go direct to the scene of wrecks, fires, substations, or other causes of power outages or electrical hazards from their homes after regular working hours.... Their vehicles are equipped with two-way radios.... We feel their ability to respond quickly is certainly a benefit to the cooperative and to the consumers to whom we supply electricity."

From Orange County REMC, Orleans, Indiana:

"I am particularly concerned about those regulations which are very broadly written and will affect a number of my employees who are on call 24 hours a day and require special tools and equipment to effect emergency repairs. These personnel are required to take a company-owned vehicle to their house so that emergency calls are more quickly dispatched."

From Midstate Electric Cooperative, Inc., LaPine, Oregon:

> "...we require trained linemen to take specially equipped vehicles home with them for after-hours standby use only. The use is not a benefit but a requirement for the quick restoration of power during outage conditions."

From Jackson County Rural Electric of Brownstown, Indiana:

> "We have already spent more time trying to read and understand the proposed regulations than the IRS can possibly gain in increased receipts from our employees this year."

Finally, at NRECA's recent 43rd Annual Meeting celebrating the 50th anniversary of rural electrification and attended by over 11,000 people, the membership adopted the following resolution:

Taxation on Fringe Benefits: Cooperative Owned Vehicles

> Certain employees of rural electric cooperatives are required as a part of their duties to drive and take home specially equipped vehicles because of the critical need for prompt response to service outages. By doing so, they are able to significantly shorten the emergency response time as members of a service crew. Additionally, personnel with radio-equipped vehicles at their residences can more promptly direct the necessary coordination for restoration of service involving multiple outages.
>
> Proposed Treasury regulations issued on January 7, 1985 would place severe and unjust penalties on rural electric employees required to take these vehicles home. The proposed regulations, effective January 1, 1985, implement changes allegedly required by the Tax Reform Act of 1984. They make these employees' transportation, mandated by company policy and frequently to their own disadvantage, subject to taxation and withholdings as income. Additionally, proposals by the Treasury would place unnecessarily burdensome recordkeeping requirements on the employee and the cooperative.
>
> We urge the Department of Treasury, the Internal Revenue Service and the Congress to modify the proposed regulations to exempt such essential and specially equipped vehicles from the applicability of the proposals regarding the treatment of such usage as a taxable fringe benefit and from the onerous record-keeping requirements.

In conclusion, let me say that it is abundantly clear, from the comments and resolution of NRECA's members, that the taxation of cooperative employees for the use of essential and specially equipped vehicles providing a public service is patently unfair. We are certain that Congress, in seeking to end abuses, did not intend to treat required commuting in yellow and green bucket trucks as a taxable fringe benefit. That truly adds insult to injury.

We urge you, therefore, Mr. Chairman and members of the Committee, as you address the recordkeeping requirements of the Treasury proposal of October 24, 1984 and its subsequent revision, to also focus on the unfairness of the January 7 and subsequent February 20 proposals relating to fringe benefits. Specifically, we would urge you to encourage Treasury to exempt from taxation as a fringe benefit the required after-hours use of essential and specially equipped vehicles used to provide a public service, such as that of electric utility employees. We believe that the case for exemption is particularly strong for rural electric cooperatives covering large territories and serving essential needs.

STATEMENT OF THE ASSOCIATED SPECIALTY CONTRACTORS, INC.

The Associated Specialty Contractors (ASC) protest, in the strongest terms, the law and IRS regulations which tax legitimate business use of company vehicles. While there is some incidental, personal value when used for commuting, the tax laws should not discourage such use which is for the benefit and convenience of the employer.

This is not just an issue of backbreaking record keeping. The record keeping could be eliminated and it would still be a bad law. This is also an issue of increased taxes.

ASC is a coalition of eight national associations of specialty contractors, listed in the Appendix. The segments of the construction industry represented by ASC affiliates consist of about 166,000 business establishments with annual sales of approximately 80 billion dollars and with 1.5 million employees. The large majority of these firms are small business enterprises.

Last year, Congress passed the Tax Reform Act of 1984. Among other revisions, it significantly changes provisions affecting the ownership and deductibility of business vehicles and equipment. Internal Revenue service regulations are further increasing the tax and paperwork burden on small business, particularly where so-called "personal" use occurs.

The new rules broadly define "personal" use. Use of a car, van or truck to commute will be "personal" use even if use of the vehicle is for the convenience and benefit of the employer.

Construction contractors maintain a fleet of cars, vans, and trucks to make service calls and to provide an onsite storehouse for tools, parts, and equipment for use at the work sites. It is a frequent and usual practice to require employees to take a vehicle home for any one or more of the following reasons:

a. Security
b. Lack of storage space at the shop
c. Availability for emergency service calls.
d. Increased productivity

Security

In some construction, it is difficult to maintain security on the job site after work hours. Building materials are stolen and vehicles are broken into or vandalized. When employees take these vehicles home, they park them in driveways and on residential streets in neighborhoods. This is far better security.

If employees stop taking vehicles home, the cost to the contractor for security increases. Either additional security measures must be taken at the job site, or some other secured parking facilities in the area must be found.

The first option increases insurance costs and the second increases storage costs. If the vehicles are returned to the shop each day, there is the additional travel time and cost to and from the job site each day. If the employee does not take the vehicle home, but rather drives first to the storage place of the vehicle, the contractor loses the productive time while the employee picks up the vehicle and takes it to the job site.

Lack of Storage Space

Because contractors maintain a fleet of vehicles, they do not always have the space at their shop or place of business to store them. If all the vehicles are returned to the shop then the contractor faces increased expense, either to buy or rent space for vehicle storage.

Many employees are requested to take vehicles home because of lack of space to store them and a business need to provide secure storage. This

"personal" use is for the convenience of the contractor. The vehicles and employees are also on call for emergency service, which can be provided more efficiently when employees take the vehicles home.

Emergency Service

Contractors also require employees to take their vehicles home to have them more readily available for emergency service calls. If a consumer calls in the middle of the night that the furnace has gone out, an employee can be called and dispatched readily to make the repairs, since tools and equipment are readily available.

Let us track that same emergency service call, if the service truck is left at the shop. The consumer calls to report "no heat". The contractor telephones an employee to make the emergency service call. The contractor must go to the shop so that he can unlock the yard where vehicles are stored. Meanwhile, the employee must travel to the shop, pick up the vehicle, and then travel to the consumer's home or business to service the "no heat" call. When the furnace is repaired, he returns to the shop to return the vehicle.

Meanwhile, the contractor either waits at the shop for the return of the vehicle or goes home to return later to again secure the service vehicle. Thus, there is significant time, inconvenience, and cost by even more people to service emergencies.

Since emergency calls are usually billed from the time of the first call to the employee to his return home, there is both a significant increase in inconvenience to the contractor and an increased cost to the consumer. There is also the negative public relations which the contractor experiences by a consumer who believes the contractor is taking advantage of the emergency and price gouging.

Increased Productivity

Employees are compensated from when they start work. In our industry, productive work which the company gets paid for does not begin at the office or shop. It begins at the work site. Work sites may be miles away and even in communities other than the office.

If all employees report to my place of business at the beginning and end of the day, contractors lose productive time. Contractors have to pay

employees for their non productive travel time to and from the job sites. That increases the overhead and cost of doing business.

However, as small businessmen, we've learned to work smarter! The employee goes directly to the job site and begins work there.

However, he needs tools, parts and equipment to work with. Again, our members have worked smarter. They have put these items in a vehicle. The employee can take part of the "place of business" with him. He can start and end the day without ever reporting to the central "place of business", the office and shop. As a result, he can do more productive work in a day which the contractor can bill out. That saves overhead and even increases income to make the company more competitive. Companies have increased productivity when employees begin work at the job site
rather than at the shop.

Unfair taxation of "personal" use

To permit this law to continue is just another example of ridiculous government regulation sapping productivity, imposing unnecessary cost, and creating inconvenience for the small businessman. This cost is passed on to the consumer.

If employees continue to take vehicles home, that "personal" use will be taxable to the employee. Some employees have already indicated that they will not take vehicles home under those conditions. Employees who do would be subject to taxation and withholding on the value of the so called "personal" use.

The rules require a contemporaneous log or diary be kept on each use of the vehicle where any "personal" use is involved. For a vehicle that goes from job site to job site or is used by several different employees during the day, that is an extremely burdensome and time consuming chore. It takes away from the productive time which should be spent on the job. Failure to keep the contemporaneous record presumes that total usage is personal, which increases the employee's tax burden and eliminates the company's legitimate tax benefits.

Thousands of employees are going to come to a distinct shock when they find greater withholding taxes based on the value of compensation of company vehicle use. This was use for the convenience of the contractor. Severe

repercussions will be felt in personnel administration and employee and labor relations.

The rules also reduce the tax credits and depreciation which can be taken for vehicles. The investment tax credit and depreciation must be reduced proportional to the percentage which a vehicle is used for "personal" use. The use of each vehicle will vary and each will require separate calculations of the proportions of business and "personal" uses.

To further document the impact on small business, attached is some material provided by one of the Associated Specialy Contractors member associations. As a member of the National Electrical Contractors Association, Muska Electric has calculated the financial impact these rules will have on their company, which run from 25 percent to 89 percent of income depending on how the company complies.

The tax credits and depreciation schedules were put in place to encourage investment and business growth. Reducing their use reduces the incentive and is counterproductive.

Recently, the Internal Revenue Service announced that it is issuing new rules with standard formula to be used for allocating business and personal uses in lieu of the record keeping. For the construction industry, those are of little value.

While certainly it could relieve contractors and their employees from onerous record keeping, it does not solve the basic problem. The basic problem is that vehicles are used for commuting at the request of and for the convenience of the employer. They are serving legitimate business purposes of the small businessman in his effort to hold down business expense and maintain productivity.

CONCLUSION

The first strike against small business contractors is the backbreaking contemporaneous recordkeeping. This paperwork forces contractors and employees to perform countless non-productive hours to help the IRS collect taxes it doesn't deserve. The cost of recordkeeping should vastly exceed the tax collected.

The IRS has graciously announced that small businesses can avoid the recordkeeping by following standard formula. Thus, a small business has a choice of keeping extensive records or using a formula that may limit the tax incentives the businessman is entitled to. Both are unacceptable.

In fact, the IRS is attempting to get a double whammy tax bonanza tacked onto the backs of business, particularly small businesses who can least afford it. Small business loses part of the value of tax credits and depreciation or small business will have to pay higher wages to compensate for the employee's higher taxes.

Some may call it revenue enhancement. We call it a tax increase...on contractors and other small businesses.

In baseball, three strikes and you're out. While the government is trying to promote economic growth through productivity, it should not be reducing productivity through such laws. Businessmen should have the flexibility to run their companies to get maximum productivity. The law and IRS regulations discourage vehicle use for the convenience of the employer even though it is in his effort to get the best productivity.

We appreciate the efforts of those Congressmen, including members of this committee who have cosponsored legislation. We believe that the changes in the law which require record keeping and increased taxation are outrageous and Congress should repeal them immediately.

APPENDIX

MEMBERS OF THE ASSOCIATED SPECIALTY CONTRACTORS

Mason Contractors of America

Mechanical Contractors Association of America

National Association of Plumbing-Heating-Cooling Contractors

National Electrical Contractors Association

National Insulation Contractors Association

National Roofing Contractors Association

Painting and Decorating Contractors of America

Sheet Metal and Air Conditioning Contractors National Association

January 29, 1985

N.E.C.A. National
7315 Wisconsin Avenue
Bethesda, Maryland 20814

Attention: Robert L. White

Dear Mr. White:

This letter is in response to your inquiry on the impact of the mileage reporting requirements on Muska Electric Company. Muska Electric is an electrical contractor employing on the average of 110 Union electricians. Our business was built around doing small jobs that average about 100 hours of an electrician's time to complete.

Several years ago, we found it was to the Company's advantage to purchase service vans and stock them with material and tools allowing the electrician to drive to the job, rather than having him call in for the material and tools he needed on the jobsite. At that time, we required the electrician to report to the shop to pick up the van and return it each night. After further review, we noticed it was costing the customer an hour, to an hour and a half every day to have the van come into the shop. We made the decision to have the electrician take the van home and report directly to the jobsite. This system worked out nicely for the Company as we were able to satisfy our customers by giving them more service for the money. We never looked on this as providing much of a fringe benefit to the electrician because the van had large company lettering on the sides and, quite frankly, is somewhat of an eyesore in a residential driveway.

The new interpretation of the revenue code by the Internal Revenue Service has a very drastic effect on the efficiencies which Muska has developed and fine-tuned over the years. Now we are in a position whereby we have three alternatives - all of which cost the Company considerable sums of money.

1. The first alternative is to have the electrician fill out the mileage log and charge him for the personal commuting miles. Our records show the vans cost about 35¢ per mile to operate, while a Company car cost 25¢ per mile. Therefore, we will have to charge the electrician 10¢ per mile more than the white collar worker who has a Company automobile.

In addition to having to pay a higher mileage charge, the electrician has the potential to have more personal miles as defined by the code than the white collar worker. This is caused by the fact that the white collar worker reports to the shop first thing in the morning which, in most cases, is less than five (5) miles; whereas, the electrician must go where assigned in the jurisdiction which can easily be thirty (30) miles from his home. This has been brought up by the electricians on many occasions, and, to date, one electrician has turned in his van and four others are seriously considering doing the same.

The mileage logs, under this arrangement, would be prepared on Company time and would require time on the part of the office staff

to compile the records. We estimate, on a conservative basis, the lost time would total $81,510 per year plus added paper costs of $3,400 a year. (See attachments for detail of costs.)

2. Our second alternative would be to insist the vans be picked up and brought back to the shop each night. Under our Union agreement, electricians would report to the shop at starting time and be back at the shop at quitting time. Once again, assuming the job assigned the electrician can be up to thirty (30) miles from the shop, we estimate the commuting to and from the shop and the jobsite would take about one (1) hour per day. This would cost either the customer in lost service, or Muska Electric in productivity, $302,380. (See attachments for detail of costs.) In this case, the electrician would not be charged for any personal use of the vehicle; however, he would still be burdened with the record keeping requirements.

3. Our third alternative would be to ignore the whole reporting requirement and not deduct any truck expenses or take any investment credit on our vans. This would cost Muska approximately $108,700 per year in additional income taxes. (See attachment for detail of costs.) This would make the electrician happy as it would reduce his record keeping and would allow him to continue as usual.

As you can plainly see, at best, none of these situations are acceptable to Muska Electric as the costs run from 25% to 89% of our average income for the past four (4) years. Now the question arises - what does the Federal Government derive from this? Based on the fact that at best, the electrician will include $4.00 per day as income (i.e., all trucks are used for commuting only) and, it appears, the average electrician is in the marginal tax bracket of 30%, the taxes generated will amount to $14,352. (See attachment for detailed analysis.) This revenue; however, will be more than off set by either loss of income taxes from either Muska Electric or its customers.

Sincerely,

MUSKA ELECTRIC COMPANY

Randolph C. Luhrs
Controller

Costs of recordkeeping

Electrician time spent recording mileage records one-quarter hour per day for 46 electricians, or 57.5 per week at $25 per hour	$1,437.50
Office staff time spent collecting mileage records, compiling the totals, and verifying their completeness. 10 hours per week at $13 per hour	130.00
Weekly costs of recordkeeping	1,567.50
Yearly costs	81,510.00

Bookkeeping costs for recordkeeping and accounting

Yearly costs:	
Computer programming for payroll charges—80 hours at $35 per hour	$2,800
Conversion of payroll checks (that is, old checks which would be destroyed because they cannot record mileage charge)	400
Cost of forms to be completed by electricians	200
Total yearly cost	3,400

Cost of recordkeeping and lost time assigning trucks kept in shop

Electrician time spent commuting from the shop to the jobsite and back again, recording mileage logs, 1 hour per day for 46 electricians, or 345 hours per week at $25 per hour[1]	$5,750
Office staff time spent collecting mileage records, compiling totals, and verifying their completeness—5 hours at $13 per hour	65
Weekly lost time and recording costs	5,815
Yearly cost	302,380

[1]Our typical work territory may range from up to 40 miles from the shop with the average job being at least 20 miles from the shop.

Costs no deductions taken by the company

Van mileage for 9 months	482,363
Annualized miles	× 12/9
Annualized miles for vans	643,151
Operating and maintenance costs: 643,151 miles × 19 cents per mile	$122,200
Depreciation expenses	$101,200
Total expenses not deducted	$223,400
Marginal tax rate (percent)	46
Additional taxes to be paid	$102,764
Investment tax credits cost ($506,000 × 6% ÷ 5 years)	$6,072
Total cost to company	$108,836

Van recordkeeping effects on company profits

Average income for past 4 years	$339,650

	Dollars	Percent of income
Cost of alternatives:		
One	81,510	24
Two	[1]302,380	89
Three	108,700	32

[1]Under this situation, we would obviously raise our selling price.

Van costs per mile

	Cents
Operating and maintenance expense per mile (see detailed listing)	19.0
Depreciation costs per mile (see detailed listing)	15.7
Total cost per mile	34.7

Depreciation cost for the 9 months ending December 31, 1984

Assumptions:	
Average vehicle fleet	46
Average vehicle life (years)	5
Average vehicle cost	$11,000
Yearly depreciation:	
Cost	$11,000
Vehicles	× 46
Years of service	506,000
	÷ 5
Yearly depreciation	$101,200
Cost per mile:	
Yearly depreciation	$101,200
	9/12
Depreciation for 9 months	$75,900

Depreciation $75,900 / Van miles (1) 482,363 = 15.7 cents per mile cost

[1] This represents total miles driven by service vans only.

Vehicle maintenance and operations expense for the 9 months ending December 31, 1984

Vehicle parts	$19,133
Outside vehicle repairs	8,740
Gasoline and oil	60,758
Insurance and license	8,060
Mechanic wages	24,000
Total vehicle expense	118,089

Cost per mile driven: $118,089 ÷ [1]621,059 = 19 cents per mile cost

[1] This represents total miles driven by all company vehicles. (This is done because no detailed records are kept which separates company automobiles.)

Additional taxes raised by charging electricians

46 electricians at $4[1] per day or $20 per week (per week)	$920
Weeks in year	× 52
Taxable income	$47,840
Effective tax rate (percent)	30
Tax revenue generated	$14,352

[1] Note that company policy states vans may be used personnally for commuting purposes only.

Service Van Material & Tools Listing

A typical Muska Service Van contains the following list of materials and tools:

- 1500 different items of material which includes, but is not limited to wire, pipe connector, fittings, cable, boxes, fuses, ballasts, locknuts, knockout seals, bushings, washers, nipples, switches, plugs, relays, timers, cover plates, straps, breakers, tape, scotchlocks, clamps, couplings, screws, and nails. All of these items come in several sizes, shapes, makes, and colors and must be stacked on a service truck.

- Standard tools on a truck consist of the following:

4 ft.	ladder
6 ft.	ladder
8 ft.	ladder
24 ft.	ladder
½"	pipe bender
3/4"	pipe bender
1"	pipe bender
1¼"	pipe bender
3/8"	variable speed reversible drill
3/8"	hammer drill
½"	angle hammer drill
100'	fish tape
25'	extension cord
50'	extension cord
100'	extension cord
	amprobe
	first aid kit
	hard hat
	2 pair safety glasses

Letter From Thomas W. Welling, Welling Contact Lens Service

February 14, 1985

Dear Senator Heinz:

As a self-employed businessman who must use my car to provide for my family, I strongly protest the 1985 Auto Log requirements. For years, I have recorded the beginning and ending mileage of my daily business trips, no matter if I used my car, or, in rare emergencies, my truck. I keep records of gasoline used for business only, keep all receipts for maintainance [redacted] business car.

Why must I list the destination, purpose of trip, and contact person? My destination is a different doctor's office each day--must I list each patient I see, and tell whether it was a check-up, new contact lens fitting, or clean and polish?

Shall I list restroom stops as "personal--.01mi." even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions.

Who is running this country, anyway? Our elected officials or the IRS? The Internal Revenue Service has a history of "computer problems" that has caused irrepairable damage to some businesses. Who gave them so much power? Their hiring of functional illiterates into positions which do not include communication with fellow workers has caused much wasted time and postage for those of us who must prove six times that we paid our taxes three years ago.

I believe the purpose of this new regulation is to discourage the businessman from taking his deduction for auto expenses. It may mean a few dollars more for the IRS from a few people, but my business is too small to survive without it. Is the IRS trying to cause the collapse of small business and raise unemployment?

Revamp the IRS, get IT working right, and get off the backs of the honest tax payer. Big Brother may be watching you, too.

Sincerely,

Thomas W. Welling

Letter From Joan Insley

Mars Metal Realty
4025 RT. 8
Allison Park, PA 15101

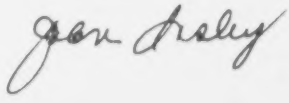
U.S. Senate
Washington, DC 20510

ATTENTION: H. JOHN HEINZ III

The rules promulgated by the government regarding the use of cars in business has reached a new high in stupidity and I certainly hope that you will have enough sense to act on repealing the law.

Very truly yours,

Joan Insley



Letter From Edward L. Vogel, President, Vogel Disposal Service, Inc.

February 22, 1985

The Honorable H. John Heinz, III
Senate Office Building
443 Russel
Washington, D. C. 20510

Dear Senator Heinz:

We would like to voice our objections to the new IRS Auto Recordkeeping Rules. These new requirements, are not only time consuming and expensive, but they are disruptive as well.

We have listed several important points which affect us and fellow businessmen tremendously and would like them emphasized.

a) User instruction time/User log time - The time needed to instruct users on the correct completion of the log sheet and the time needed to log mileage, destination, etc.
b) Enforcement time by the employer - The time to reprimand those users who do not comply with the completion regulations.
c) Interference with daily business activities - Takes away from sales time, service time, etc.
d) Additional bookkeeping - Extra workload for an already busy person.
e) Collection and verification of log sheets - Who should do it? This requirement takes a person away from their regular duties.
f) Additional cost for storage and maintenance of these records (file cabinets, etc.).
g) Additional expense for supplies needed by each user (log sheets, clipboards, etc.).

Our supervisory personnel do not work 8:00 A.M. to 5:00 P.M. days, but instead work on an "on call" basis. These people, more often than not, work 12-hour days. In addition, they are required to make special trips to the office/shop/service location at very odd hours of the day and night directly from their homes as the occasion demands.

We shall appreciate your efforts in getting these new rules repealed or at least revised into more reasonable terms.

Sincerely,

Edward L. Vogel

Edward L. Vogel
President

LETTER FROM ROBERT PURSE, MUETZEL & PURSE FLORIST

Feb. 12 1985

Senator John Heinz
U.S. Capitol
Washington, D. C.
20510

Dear Sirs:

In behalf of my firm and fellow independent small business members of Florists' Transworld Delivery, I strongly urge you to support enactment of S. 260 and/or H.R.531 repealing onerous and burdensome record Keeping requirements relating to use of automobiles and vans for business/personal use. The regulation recently proposed by Internal Revenue Service imposes an impossible record keeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We beliwve this IRS regulation could significantly increase our cost of doing business and even our ability to stay in business. Your support of these retail bills is vital to us and will be greatly appreciated.

Very truly yours,

Robert Purse (Partner)

LETTER FROM PETER J. STAHL, NEWHARD PHARMACY

February 22, 1985

Senator John Heinz
SR 469 Russell Senate Building
Washington, DC 20510

Dear Senator Heinz:

We have been trying to keep mileage records under the new IRS requirements since the first of the year and are tearing out our hair trying to comply.

Our business is a retail Pharmacy. My personal use of the company car consists of driving home at night and back to work in the morning.

Business use of the car consists of deliveries to customers (sometimes 10 or more a day), picking up merchandise at a wholesaler, manufacturer or another store, and going to trade shows and seminars.

Trying to keep a detailed log (with various drivers) is really a full-time job.

I would be willing to claim a reasonable percentage of the mileage as personal use, or a certain amount per day or week;

Yours truly,

Peter J. Stahl

LETTER FROM R.J. HUTTON, PRESIDENT, THE CONARD-PYLE CO.

February 25, 1985

Senator John Heinz
U. S. Senate
443 Russell Office Building
Washington, DC 20510

Dear Senator Heinz:

I was very pleased to have the opportunity to be among the Pennsylvania Chamber of Commerce Directors when you spoke to them this past Friday. Thank you for taking the time to be with us and especially for explaining your position in several areas.

As the chief executive and major stockholder of a small business in Pennsylvania, I am particularly troubled by the 1984 Tax Law as it pertains to "Business Use Recordkeeping." I do not understand the need for such recordkeeping and how it could possibly enhance the tax revenue; at least, to the extent of overcoming the headaches, time and effort spent by me and others in our organization for such detailed recordkeeping.

One of the most disconcerting thing about the IRS rules and the law in itself is that there is so little agreement on exactly what has to be kept by whom and how detailed such records should be. Ask a tax attorney and an accounting firm and you get two different answers. Check this out with a third party, and you get a third answer. IRS is most confusing.

In my own case my automobile is used 100% for business with one minor exception. My home is three tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. Much of my mileage is local driving between two of our properties less than four miles apart here in Chester County. If I document each of those trips and all the other miscellaneous business that I have within five miles of my office,

I will approach a telephone directory size log by year's end. No auditor or IRS agent is ever going to review it. Such a law is not a good law. Please, on behalf of American business efficiency and productivity change and rid the country of this oppressive, needless law.

Thank you.

Sincerely,

R. J. Hutton
President

Letter From David P. Walsh, Vice President, Dauphin Consolidated Water Supply Co.

February 21, 1985

The Honorable John Heinz
United States Senate
277 Russell Building
Washington, DC 20515

Dear Sir:

I strongly support your co-sponsoring of S260 to repeal the reporting requirements on Comany vehicle usage which has been brought about by the recent IRS ruling to account for business and non-business usage of company owned vehicles.

The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end.

I appreciate your attention to this very serious matter.

Very truly yours,

DAUPHIN CONSOLIDATED
WATER SUPPLY COMPANY

David P. Walsh
Vice President

Statement of the American Rental Association

The American Rental Association ("ARA") a national trade association, comprised of over 4,000 member firms engaged in the business of renting diverse items of personal property. Our national office is located in the ARA Building at 1900 - 19th Street, Moline, Illinois 61265.

ARA member firms rent a very wide variety of equipment and other personal property, including such lines as homeowner items; party supplies and equipment; construction machinery and equipment; vehicles and other mobile equipment; medical equipment and devices; and excercise and recreational equipment. ARA is in its 30th year of operation and is the leading organization representing the industry of personal property rentals. Mixed use of company vehicles in sales and service is an integral part of their daily business operation.

Our member firms wish to comment, as part of your hearings this week, with respect to the Treasury Department's temporary and proposed regulations implementing the new **"adequate contemporaneous record-keeping"** requirements for business use of automobiles and other vehicles, i.e., Sec.1.274-5T.

The regulations were ill conceived, hastily drawn, and incorporated in the Tax Reform Act of 1984 (Sec.179, P.L. 98-369). With notable zeal, the IRS promulgated its first set of proposed regulations implementing the new statute. Predictably, IRS received a flood of protests from the public and again, hastily responded in token measure by issuing temporary regulations (50 FR 7038) modifying the substantiation requirements for deductions and credits with respect to certain listed property. The IRS modifications, however, are ineffectual and do little to alleviate the paperwork burden on businessmen and particularly, the small businessman. Further, IRS has suffered some loss of credibility in the process and there is some basis for concern as to what further modifications it might promulgate in the future if Sections 1.274-5T, 1.264-6T are allowed to remain in the Internal Revenue Code.

These stringent requirements for very detailed, contemporaneous records of the use of company-owned automobiles and certain other equipment items are neither fair nor wise. These paper-generating provisions interfere with normal business operations and impose an unreasonable and oppressive burden on small businesses which simply cannot bear the lost time, reduced productivity and unnecessary record-keeping expense.

This basically is a **paperwork issue** and **not a tax policy question.** We vigorously object to the absurd burdens imposed on taxpayers as a condition to their obtaining a **legitimate business deduction.**

We urge the outright repeal of these onerous, costly and counterproductive provisions. Any action short of outright repeal, will not only enormously and unnecessarily increase the paper-work burden of all businesses and their employees but, moreover, will seriously erode public confidence in our voluntary tax system.

The American Rental Association appreciates this opportunity to express its views; and we request that this statement be made a part of the printed record of your hearing.

Respectfully submitted,

C. A. Siegfried, Jr., CAE
American Rental Association

Statement of the National Cattlemen's Association

These comments relative to the contemporaneous records or "auto logs" issue are submitted on behalf of the members of eight agricultural organizations. These agricultural producers wish to register their objections to the regulations requiring "adequate contemporaneous records" to substantiate business deductions for use of certain property, particularly vehicles.

In the past few months, we have received many telephone calls and letters expressing the frustration that farmers and ranchers have over the new regulations. A common theme is that they are tired of the ever-increasing burdensome demands placed upon them for more information, more data, and certainly more paper.

We recognize and appreciate the efforts of the Treasury Department to revise the regulations and alleviate some of the burden. However, as is often the case when exceptions are carved out of an already cumbersome regulation, the result is an even more complex set of rules for farmers and ranchers to wade through in order to comply.

Apart from increasing the complexity of the law, the revisions also contain a basic inequity. Arbitrarily establishing an 80-percent business--20-percent personal split requires those who use their vehicles strictly for business to keep records, while those who use the vehicles less than 80 percent of the time for business effectively receive a "gift." Furthermore, many producers may just accept the 80-percent deduction, foregoing a legitimate higher deduction, out of frustration over keeping the detailed records of personal use still required. This is hardly equitable and certainly not acceptable to the agricultural producers I represent today.

A third concern is the additional accounting for employee use of vehicles that is required under these regulations. As we interpret the rules, we must still reflect income to an employee for "commuting" use of a vehicle, even if the employee lives on the farm and uses the vehicle only for farm business. This is unreasonable, but only indicative of the complexity of the revised regulations.

Finally, we must object to the process followed in establishing these regulations. The Treasury Department often writes temporary regulations covering critical issues and gives them force of law when published, knowing that the regulations are likely to be

modified after public comment. This imposes a tremendous uncertainty on business operators like the agricultural producers I speak for, requiring them to comply with unreasonable regulations while working for revisions. We suggest that such regulations become effective only after they are final, and then for the following tax year, unless there is an overwhelming urgency for immediate imposition as directed by Congress.

We are supportive of legislation returning to the "adequate records" requirement of previous law, dropping the requirement that such records be "contemporaneous." The additional cost of meeting the requirements imposed by the word contemporaneous are substantial, particularly when any exceptions increase the complexity of the rules. While the prior law required that records be kept, the burden of keeping records sufficient to justify deductions was not nearly as great as under these regulations.

Again, we need not remind you of the strong grass-roots opposition to "contemporaneous" logs. Business operators, including farmers and ranchers, view this as an unreasonable interference in business activity and a paperwork burden imposed.

We support congressional efforts to move in the direction of tax reform based on fairness, simplicity and economic growth. It is ironic that these regulations move away from simplification and promote paperchase rather than economic growth.

Thank you for this opportunity to comment.

Statement of the American Public Power Association

The American Public Power Association ("APPA") submits the following statement on the issue of taxation of government-owned vehicles provided to public employees who perform critical services during non-business hours. APPA is the national service organization representing more than 1,750 local publicly owned electric utilities nationwide.

Pursuant to the Tax Reform Act of 1984, the Internal Revenue Service (IRS) issued regulations requiring public and private employees, who take employer-provided vehicles home to do work during non-business hours, to include a portion of the lease value of those vehicles as income in calculating their federal income tax obligation. On February 20, 1985, the IRS released revised regulations which liberalize recordkeeping requirements and reduce the imputed income value of vehicles used for commuting.

APPA's Legislative and Resolution's Committee recently adopted the attached resolution setting forth its views on this issue. In addition, many general managers of municipally owned utilities have expressed their strong opposition to this provision in the Act and its implementation by the IRS. A sample of their comments also is attached to this statement.

Municipal utility employees use government-owned vehicles during non-business hours to perform the following <u>essential</u> public services:

-- repair and maintain facilities used in providing electricity, water, gas and sewage treatment;

-- restore service to hospitals or residences, or remove dangerous objects such as fallen power lines;

-- provide assistance needed so police, fire and ambulance crews can then handle emergency situations; and

-- respond to electric contact accidents involving utility employees or the public.

Without immediate access to utility vehicles, the delays could cause serious harm to the public safety and welfare. And, for this very reason, many utility employees are required to take vehicles home to have them at their immediate disposal.

If the value of these vehicles remains taxable income, it will impose an onerous and unjust burden on municipal electric utility employees. These employees are already inconvenienced by having to be "on call" 24 hours a day, 7 days a week. Their salaries and benefits only partially compensate them for this inconvenience. Also, they gain no significant personal use from these vehicles and, thus, this could hardly be considered a "fringe benefit" that should be taxed. The revised IRS regulations provide no relief, including those reducing the imputed value of vehicles used for commuting if utility employees can, in fact, take advantage of this particular provision.

In addition, the IRS regulations may require them to keep detailed unnecessary records of their vehicle use. The revised rules liberalizing these requirements, again, do not provide any appreciable assistance.

For these reasons, the American Public Power Association urges the Members of the Senate Committee on Appropriations to give strong support to legislation rescinding the IRS' authority to tax the value of these vehicles. Alternatively, APPA recommends committee members support an amendment to S. 281 to explicitly include municipal electric utility employees within the definition of "public safety employee" set forth in proposed Sec. 132(h)(6)(C) so their use of government-owned vehicles is recognized as a required condition of their employment.

Thank you for this opportunity to present our views.

TAXATION
OF
EMPLOYER-PROVIDED VEHICLES
USED TO PERFORM ESSENTIAL PUBLIC SERVICES

WHEREAS, many municipally owned utilities require essential employees to take utility-provided vehicles home; and

WHEREAS, utility employees use these vehicles during non-business hours to respomd promptly to the maintenance and repair of facilities used in the provision of essential public services such as electricity, water, gas, and sewage treatment; and

WHEREAS, the Internal Revenue Service (IRS) has adopted temporary regulations pursuant to the Tax Reform Act of 1984 requiring such employees to treat the lease value of these vehicles as a fringe benefit subject to federal taxation; and

WHEREAS, the IRS also has initiated a rulemaking procedure to make such regulations permanent; and

WHEREAS, these regulations will impede the performance of essential public services and impose unreasonable recordkeeping requirements and unnecessary tax burdens on these essential public employees;

NIOW, THEREFORE, BE IT RESOLVED: that the American Public Power Association urges the Congress to enact legislation such as H.R. 600, the "Taxpayers Relief Act of 1985," to repeal this requirement or, at a minimum, exempt employees who take employer-provided vehicles home to perform essential public services from having to include the value of such vehicles in calculating their federal income tax obligation.

AND BE IT FURTHER RESOLVED: that until such an exemption is enacted, the IRS should adopt regulations minimizing the recordkeeping burden on public employees.

--Adopted by the Legislative and Resolutions Committee of the American Public Power Association February 27, 1985, in Washington, D. C.

LETTER FROM JOHN F. COX, MANAGER, MUNICIPAL LIGHT AND WATER

January 24, 1985

Mr. Paul Fry
American Public Power Association
2301 "M" Street N.W.
Washington, D.C. 20037

SUBJECT: I.R.S. rulling as taxable fringe benefit of Commuting Vehicles

Dear Mr. Fry:

Municipal Light and Water, City of North Platte has five Supervisory positions that it is required they have the Company vehicles at home to facilitate quick response and access to the mobile radio during emergencies. These people are on a monthly salary and on 24 hour call. It really doesn't seem proper to tax as a fringe benefit the commuting to the general office. Can you help us with an approprate I.R.S. rulling on this.

Additionally we require one electric and on water person to be on call each night and weekends. Naturally a vehicle with mobile radio is assigned and the employee required to have it at home. No personal use, other then commuting to the general office, is allowed as is the case with the supervisors. It seems that an exemption is in order in this situation. Please respond with how the picture looks to you.

Also please send a copy of the regulations.

Very truly yours,

John F. Cox

John F. Cox, Manager
MUNICIPAL LIGHT AND WATER

LETTER FROM JERRY L. CAMPBELL, EXECUTIVE DIRECTOR, TENNESSEE VALLEY PUBLIC POWER ASSOCIATION

January 31, 1985

Commissioner of Internal Revenue
Washington, DC 20224

ATTENTION: CC: LR: T (LR-216-84)

Re: Proposed and Temporary Internal Revenue Service Regulations On Taxation of Fringe Benefits, Filed January 2, 1985

Dear Commissioner:

The Tennessee Valley Public Power Association ("TVPPA") is an association representing the interests

of 160 rural electric cooperatives and municipally-owned electric utilities which distribute power in the Tennessee Valley region to more than seven million citizens.

We are submitting the following comments in connection with the Temporary Regulations, (LR-216-84), T.D. 8004, issued by the Internal Revenue Service on the taxation of fringe benefits. These comments deal specifically with provisions of the temporary regulations regarding employer-provided automobiles.

The member utilities represented by TVPPA are without exception organized as nonprofit entities, either exempt from taxation under Internal Revenue Code Section 501(c)(12) or non-taxable as a unit of local government, to provide electric power to their communities at the lowest possible cost. As nonprofit and non-taxable entities, the member utilities have no economic need for and cannot use the investment tax credits or depreciation associated with items such as employer-provided automobiles. Utility-provided vehicles are available to employees of the utilities only to assist them in the quick and efficient performance of their duties in responding to emergency situations and to reduce cost for the utilities.

The temporary regulations issued regarding employer-provided automobiles are not only economically burdensome for the utilities in terms of record keeping, but expensive to the ratepayers being served by the utilities. Many of the vehicles used by the utility employees are service vehicles of varying natures which are used to respond to power outages and make emergency repairs. Employees are required to take these vehicles home so that the utility may respond to a critical situation in a minimum of time. Storing the vehicles at a central location is not practical or economically feasible for many member utilities of TVPPA since such utilities service expansive rural areas. Utilities reduce costs by not having to store these vehicles in a central location as well as reduce the incidents of vandalism to such vehicles. In the rural areas, the utility employee responding to an emergency situation is often at least thirty minutes away from the utility headquarters. Storage of these vehicles at a central location would require an employee to make a trip from his home to the utility headquarters to pick up the vehicle and then proceed to the site of the emergency, increasing response time to power outages in emergency situations by at least an hour, most probably more. Hospitals are an example of an institution that depends on utilities to restore power as quickly as possible, particularly in rural areas where one hospital may service many communities. Also, in times of extreme cold, electric power needs to be restored as quickly as possible since it is the primary heat source for many families.

Since these utilities do not have the tax advantages of investment tax credits and depreciation associated with the employer-provided vehicles, the extra expense involved in complying with these provisions of the Temporary Regulations is neither reasonable nor justified particularly since such expense must necessarily be passed directly to the consumer in the form of higher rates. Also, since the utility employees are given no choice in whether they will take such utility vehicles home and since generally such utility-provided vehicles are not suitable for personal use, no real benefit is gained by the utility employee in the use of such vehicles. Consequently, the

requirement that the value of such vehicles be included in the gross income of the employees is inequitable and unreasonable. The result is that the employee is taxed on the value of something that he has neither had the benefit of nor has received; and although the employee receives some benefit from commuting in the vehicle, no doubt most employees would prefer to drive their own vehicles rather than be burdened with a utility vehicle.

In order that the utilities represented by the TVPPA can continue to supply reasonably priced and reliable electric power to the consumers in the Tennessee Valley, it is requested that before final regulations on the taxation of fringe benefits are issued, a provision be included exempting utilities owned by state or local government or their boards or agencies and electric cooperatives and their employees from the provisions regarding employer-provided automobiles.

We would appreciate your help in resolving this important and serious problem facing the utilities and electric cooperatives represented by the TVPPA.

Please direct all information, notices and questions on this matter to the undersigned at the above address.

Very truly yours,

Jerry L. Campbell

Jerry L. Campbell
Executive Director

LETTER FROM S. DIANE DOLAN, AUDITOR/COMPTROLLER, PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

February 19, 1985

Mr. Paul Fry
American Public Power Association
2301 M Street, NW
Washington, DC 20037

RE: Employer Provided Automobile as a Taxable Fringe Benefit

Dear Mr. Fry: LTR: 85-101

I request that APPA file a comment as to an exemption for the use of District vehicles for emergencies. Certain employees of the District perform "standby" duty after normal working hours including Saturdays, Sundays and holidays. These employees receive all calls from an answering service.

These employees take home (only when on standby) a District vehicle equipped with a two-way radio for the following reasons:

1. To be able to go directly to a site reported to have downed wires.

2. To give assistance in dispatching in time of trouble.

3. To respond immediately to electrical contact accidents, either District employee or general public.

4. To investigate and take pictures of accidents involving District's equipment (poles, transformers, fences, etc.)

5. The vehicles are equipped with emergency equipment, first aid kits, bolt cutters, flares, four-way flashers, fire extinguishers, etc., for emergency situations.

District's policy is that the vehicle is for District use only; not personal use at any time.

It is imperative that the standby person be able to respond directly to the scene with a properly equipped vehicle. In the case of downed lines and other electrical hazard situations--protection of the public's safety can best be accomplished by the employee reporting directly to the scene rather than waste time driving a personal vehicle to headquarters to pick up a District vehicle.

I am asking your help in obtaining an exemption for these vehicles. Also, please send a copy of the regulations.

Sincerely,

PUBLIC UTILITY DISTRICT NO. 1
OF FRANKLIN COUNTY

S. Diane Dolan
Auditor/Comptroller

LETTER FROM RICHARD L. YOUNG, UTILITIES DIRECTOR, CITY OF PALO ALTO

February 1, 1985

Mr. Paul Fry
AMERICAN PUBLIC POWER ASSOCIATION
2301 M Street, NW
Washington, D.C. 20037

Dear Mr. Fry:

In regard to the Public Power Association article of January 21, 1985 regarding taxation of employee provided automobiles, I would make the following comments:

Utilities often require certain employees to drive City vehicles for specific purposes. I refer to standby conditions where after-hours emergency service is provided directly to the emergency site from the employee's home by means of having appropriate vehicles assigned to those people. This is an extra duty and often only partially compensated in terms of salary and benefits and is more often than not an imposition on the employee's time. An attempt to tax their use of the vehicle because of incidental transportation supplied back and forth to the work station could very easily result in their refusing to accept such assignments. This could totally destroy the program resulting in a considerable deterioration in the service level properly provided.

It is understandable that there might be reason to tax privileged use of an employer provided vehicle, but it is obvious to my mind that the direct assignment as part of their work should not bear in this issue. One solution might be to exclude from such provisions vehicles that are exempt licensed. Other than that, the IRS would have to rely on an employer affidavit stipulating that the use of the vehicle was required by job assignment circumstances. We operate four Utilities in Palo Alto and supply emergency service for water, gas, electric, and sewer customers. Obviously, any delay in response, particularly to electrical and gas problems, could be life endangering and I would not want to be responsible for any deterioration in our ability to respond.

Please add our concerns to any comments you may make and inform us of any action that does result. We appreciate your efforts in our behalf.

Sincerely,

Richard L. Young
Utilities Director

[4830-01]

[Final draft of 2-7-85]

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

[26 CFR Part 1]

[LR-145-84]

LIMITATION ON AMOUNT OF DEPRECIATION AND INVESTMENT TAX CREDIT FOR LUXURY AUTOMOBILES; LIMITATION WHEN CERTAIN PROPERTY IS USED FOR PERSONAL PURPOSES

NOTICE OF PROPOSED RULEMAKING

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of previous notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws the notice of proposed rulemaking by cross-reference to temporary regulations that was published in the FEDERAL REGISTER on October 24, 1984 (49 FR 42743), relating to the limitation on the amount of cost recovery deductions and investment tax credit allowed to taxpayers who purchase passenger automobiles for use in a trade or business or for use in the production of income, and to the limitations on cost recovery deductions and the investment tax credit allowed to taxpayers who use "listed property" for both business and personal purposes. The text of temporary income tax regulations under sections 274 and 280F of the Internal Revenue Code of 1954, also published on that date (49 FR 41701), served as the comment document for the withdrawn notice of proposed rulemaking. In the Rules and Regulations portion of this issue of the FEDERAL REGISTER, the Internal Revenue Service is amending the temporary regulations under sections 274 and 280F that were

published on October 24, 1984, and issuing a new temporary regulation under section 274. The text of the new and amended temporary regulations serves as the comment document for a new notice of proposed rulemaking contained in this document.

DATES:

PROPOSED EFFECTIVE DATES

The regulations relating to the limitations on the investment tax credit and recovery deductions are proposed to be effective in general for "listed property" placed in service or leased after June 18, 1984. Those regulations would not apply to certain property acquired or leased pursuant to a binding contract in effect on June 18, 1984. The regulations relating to substantiation requirements for the use of "listed property" are proposed to be effective for taxable years beginning after December 31, 1984.

DATES FOR COMMENTS

Written comments must be delivered or mailed by [45 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-145-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George T. Magnatta (with respect to cost recovery deduction questions) (202-566-6456), Michel A. Dazé (with respect to investment tax credit or leasing questions) (202-566-3829), or Cynthia E. Grigsby (with respect to definitional or substantiation questions (202-566-3935), of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Temporary regulations published in the FEDERAL REGISTER on October 24, 1984 (49 FR 42701) amended the Income Tax Regulations (26 CFR Part 1) to reflect amendments to section 274 of the Internal Revenue Code of 1954, relating to substantiation requirements, and the addition to the Code of section 280F, relating to limitations on cost recovery deductions and the investment tax credit for certain property. Those temporary regulations are amended and a new temporary regulation under section 274 is added by a Treasury decision published in the Rules and Regulations portion of this issue of the FEDERAL REGISTER. The preamble to the temporary regulations published on October 24, 1984, and the preamble to the amendments published in this issue of the FEDERAL REGISTER contain a detailed explanation of the provisions of the regulations. The temporary regulations, as amended, will remain in effect until superseded by final regulations which are proposed to be based on the temporary regulations and issued under the authority contained in sections 280F and 7805 of the Internal Revenue Code of 1954 (98 Stat. 494, 26 U.S.C. 280F; 68A Stat. 917, 26 U.S.C. 7805).

COMMENTS

Before these proposed amendments are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. Comments submitted with respect to the withdrawn notice of proposed rulemaking remain on file and need not be resubmitted.

Certain types of vehicles are excluded from the definition of "passenger automobile" including, inter alia,

any truck or van, if the regulations so specify. Comments are invited as to the types of trucks or vans that should be excluded from the definition of "passenger automobile."

Comments are also invited with respect to the manner of allocating the use of "listed property" between the business and personal use of the property. Specifically, the Internal Revenue Service is interested in suggestions as to whether different measures of business and personal use other than those provided in the temporary regulations are appropriate.

The temporary regulations (§ 1.274-6T) published in this issue of the FEDERAL REGISTER prescribe certain methods that a taxpayer may use to satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4). For example, if an employer provides an automobile for use by an employee who spends most of a normal business day using the automobile in connection with the employer's business, the employer may treat the automobile as used 70 percent for business and 30 percent for personal purposes. The employer must also determine an amount to be included in the employee's income for the availability of the automobile for personal use. It is thought that the employee should have the opportunity to document a greater amount of business use and thus reduce the amount of the taxable fringe benefit. Comments are requested as to whether the regulations should require an employer to notify an employee if the employer is using one of the methods prescribed in § 1.274-6T. Comments are also welcome on whether the regulations should establish a procedure for employers and employees to elect the same method at the beginning of each calendar year.

In the case of a fleet of vehicles owned or leased by an employer and used by employees for most of a normal business day in connection with the employer's trade or business, the Service is considering an alternative method for the employer

to satisfy its "adequate contemporaneous record" requirement. In lieu of using the percentages prescribed in § 1.274-6T (b) (3) of the temporary regulations, an employer would be able to establish different percentages for direct use of a vehicle in the employer's trade or business and personal use by employees by a method similar to the following:

(1) The employer would identify a class of at least 100 vehicles that are physically similar and that are used in a similar fashion,

(2) In each taxable year, the employer would choose a random sample of the class of vehicles using accepted sampling techniques,

(3) The sample size would preferably be at least 250 vehicles, or one-half the class in the case of fleets of less than 500 vehicles, and

(4) The percentage of average business use of the vehicles in the sample would apply to the class if determined from records of actual use kept for these vehicles. Comments are invited with respect to this alternative method of satisfying the "adequate contemporaneous record" requirement.

A public hearing had been scheduled to be held on February 5, 1985, at the national office of the Internal Revenue Service. That hearing is postponed and will be rescheduled at a later time in order to provide the public an opportunity to consider the amendments proposed by this notice. Notice of the time and place of the hearing is published in this FEDERAL REGISTER.

The collection of information requirements contained in the temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these

requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of those comments to the Service.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

LIST OF SUBJECTS IN
26 CFR §§ 1.61-1 THROUGH 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

The notice of proposed rulemaking by cross-reference to temporary regulations that was published in the FEDERAL REGISTER on October 24, 1984 (49 FR 42743), relating to the limitation on the amount of cost recovery deductions and investment tax credit allowed for passenger automobiles and to the limitations on cost recovery deductions and the investment tax credit allowed for "listed property", is hereby withdrawn. The withdrawn notice of proposed rulemaking is superseded by the notice of proposed rulemaking

by cross-reference to temporary regulations that is contained in this document.

(signed) Roscoe L. Egger, Jr.
Commissioner of Internal Revenue

[4830-01]

[Final draft of 2-7-85]

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

[26 CFR PARTS 1, 31, AND 54]

[LR-216-84]

TAXATION OF FRINGE BENEFITS

NOTICE OF PROPOSED RULEMAKING

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of previous notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws the notice of proposed rulemaking by cross-reference to temporary regulations that was published in the FEDERAL REGISTER on January 7, 1985 (50 FR 836), relating to the taxation of fringe benefits. Temporary regulations also published on January 7, 1985 (50 FR 747) served as the comment document for the withdrawn notice of rulemaking. In the Rules and Regulations portion of this issue of the FEDERAL REGISTER, the Internal Revenue Service is amending those temporary regulations. The text of the temporary regulations, as amended, serves as the comment document for a new notice of proposed rulemaking contained in this document.

DATES: Written comments must be delivered or mailed by [INSERT DATE THAT IS 45 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. The regulations are proposed to be effective as of January 1, 1985. One amendment that is published elsewhere in this issue of the FEDERAL REGISTER is proposed to be effective as of [30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-216-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention CC:LR:T (202)566-3918 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Temporary regulations published in the FEDERAL REGISTER on January 7, 1985 (50 FR 747) amended Parts 1, 31, and 54 of Title 26 of the Code of Federal Regulations, relating to the taxation of fringe benefits. Those temporary regulations are amended by a Treasury decision published in the Rules and Regulations portion of this issue of the FEDERAL REGISTER.

The regulations as amended provide guidance on the treatment of taxable and nontaxable fringe benefits, including the valuation of taxable fringe benefits for purposes of income and employment tax withholding. In particular, the regulations provide special rules for valuing employer-provided automobiles, use of employer-provided automobiles or other vehicles for commuting, flights on employer-provided airplanes, and free or discounted flights on commerical airlines. In addition, the regulations provide

guidance concerning when and in what manner employers must collect and pay income and employment taxes.

Sections 61, 3121, 3231, 3306, 3401, and 3501 of the Internal Revenue Code of 1954 (Code) were amended, and sections 132 and 4977 were added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). The regulations are to be issued under the authority contained in sections 132 and 7805 of the Code (98 Stat. 878; 68A Stat. 917). The preamble to the temporary regulations published on January 7, 1985, and the preamble to the amendments published in this issue of the FEDERAL REGISTER contain a detailed explanation of the provisions of the regulations. The temporary regulations, as amended, will remain in effect until superseded by final regulations which are proposed to be based on the temporary regulations.

COMMENTS

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. Comments submitted with respect to the withdrawn notice of proposed rulemaking remain on file and need not be resubmitted. Notice of the time and place of the public hearing is published in this FEDERAL REGISTER.

Comments are invited concerning the administrability and appropriateness of the special rules contained in the temporary regulations relating to valuing employer-provided automobiles, use of employer-provided automobiles or other vehicles for commuting, flights on employer-provided airplanes, and free or discounted flights on commercial airlines. In particular, comments are requested on the manner in which employers and employees should elect to use

these special valuation rules, including any necessary reporting requirements.

To use the special rule for valuing the availability of an employer-provided vehicle for commuting, the employer must require the employee to commute in the vehicle for bona fide noncompensatory business reasons. Examples of these reasons may include:

(1) The availability of an employee to respond at any time to a radio dispatch or similar call (for example, a utility company truck equipped with tools necessary to respond to a power emergency),

(2) The elimination of a significant expense for the employer because of the need to provide security for, or to garage, the vehicle (for example, the danger of vandalism in the case of a vehicle parked overnight on a construction site), and

(3) The attendant public benefit derived from such requirement (for example, a police automobile parked in public view).

Suggestions of other reasons are invited.

Comments are requested relating to the allocation by employers of the income attributable to personal use of vehicles that are available to more than one employee during a period. Comments are invited concerning the appropriateness of requiring employers to allocate income attributable to personal use or, in the alternative, providing that employees may determine, together with their employer, the allocation of income attributable to personal use.

Comments are also requested concerning the definition of "officer" for purposes of determining whether an employee is a "key employee." In particular, comments are invited regarding the circumstances under which employees of certain

employers, such as banks and thrift institutions, should or should not be considered officers.

Comments are also requested relating to the need for special rules for valuing other taxable fringe benefits, such as the use of an employer-subsidized eating facility that does not meet the statutory exclusion requirements, because for example, it is not available on a nondiscriminatory basis to all employees or it derives revenue that normally equals or exceeds the costs of operating the facility. In addition, comments are invited concerning the need for a special rule for valuing the use of an employer-operated athletic facility that is not eligible for an exclusion from income because, for example, substantially all the use of the facility is not by employees and their spouses and dependent children. Comments should also focus on the need for special rules for valuing international flights on employer-provided airplanes and use of employer-provided automobiles in foreign countries.

Comments are also requested relating to the definition of "employee" for purposes of the section 4977 election concerning the line-of-business restriction in section 132. Specifically, comments are requested as to whether, and to what extent, retirees should be included in the definition of employee.

Comments are also requested concerning the circumstances under which retirees should be treated as officers, owners, or highly compensated employees for purposes of the nondiscrimination rules contained in section 132.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office

of Information and Regulatory affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

SPECIAL ANALYSES

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

DRAFTING INFORMATION

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

LIST OF SUBJECTS IN
26 CFR §§ 1.61.1 - 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

LIST OF SUBJECTS IN
26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad Retirement, Social Security, Unemployment tax, Withholding.

LIST OF SUBJECTS IN
26 CFR Part 54

Excise taxes, Pensions.

The notice of proposed rulemaking by cross-reference to temporary regulations that was published in the FEDERAL REGISTER on January 7, 1985 (50 FR 836), relating to the taxation of fringe benefits, is hereby withdrawn. The withdrawn notice of proposed rulemaking is superseded by the notice of proposed rulemaking by cross-reference to temporary regulations that is contained in this document.

(signed) Roscoe L. Egger, Jr.

Commissioner of Internal Revenue

[4830-01]

[Final draft of 2-7-85]

TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY

SUBCHAPTER A--INCOME TAX

SUBCHAPTER C--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

PART 1--INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INFORMATION AT SOURCE

(T.D.8009)

Substantiation with respect to certain means of transportation for taxable years beginning after 1984; Taxation of fringe benefits.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the requirement of section 274 (d) (4) (as amended by the Tax Reform Act of 1984) that any deduction or credit with respect to "listed property" be substantiated with "adequate contemporaneous

records." This document also amends other temporary income tax regulations relating to the limitations placed on cost recovery deductions and the investment tax credit for "listed property" and temporary income and employment tax regulations relating to the taxation of fringe benefits. In addition, the text of the temporary regulations set forth in this document and the text of previously published temporary regulations that are amended by this document serve as the text of proposed regulations for two notices of rulemaking published in the Proposed Rules section of this issue of the FEDERAL REGISTER. This action is necessary to provide the public with guidance needed to comply with the law.

DATES: The temporary regulations relating to the limitations on the investment tax credit and cost recovery deductions are effective in general for "listed property" placed in service or leased after June 18, 1984. The temporary regulations relating to substantiation requirements are effective for taxable years beginning after December 31, 1984. The temporary regulations relating to the taxation of fringe benefits are effective as of January 1, 1985. One amendment to the previously issued temporary regulations relating to the taxation of fringe benefits is effective as of [30 DAYS AFTER PUBLICATION OF THIS TREASURY DECISION].

FOR FURTHER INFORMATION CONTACT: Michel A. Dazé, with respect to substantiation requirements (202-566-3829), or Annette J. Guarisco, with respect to the taxation of fringe benefits (202-566-3918), of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington D.C. 20224, Attention: CC:LR:T.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document adds new temporary regulations to the Income Tax Regulations (26 CFR Part 1) under section 274 of the Internal Revenue Code of 1954 (Code), relating to the substantiation requirements with respect to certain "listed property." Section 179 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 713) (the "1984 Act") amended Code section 274 (d) to provide that no deduction or credit shall be allowed with respect to any "listed property" (as defined in section 280F (d) (4)), unless the taxpayer substantiates any deduction or credit with "adequate contemporaneous records." Temporary regulations under section 274 (d) were published in the FEDERAL REGISTER on October 24, 1984 (49 FR 42701), providing preliminary guidance for taxpayers affected by the requirement to maintain adequate contemporaneous records for taxable years beginning after December 31, 1984. This document amends those temporary regulations to clarify the types of records that are generally necessary to substantiate any deduction or credit. In addition, this document adds a new § 1.274-6T to provide specific methods which a taxpayer may be eligible to use in order to satisfy the "adequate contemporaneous record" requirement.

Section 179 of the 1984 Act also added a new Code section 280F to provide limitations on the investment tax credit and depreciation with respect to "listed property" when such property is used for both business and personal purposes. "Listed property" includes a passenger automobile or any other property used as a means of transportation. This document amends temporary regulations under section 280F, which were also published in the FEDERAL REGISTER on October 24, 1984 (49 FR 42701), to clarify that certain property used as a means of transportation is not treated as

"listed property" because it is of a type not ordinarily susceptible to personal use.

The text of the temporary regulations under sections 274 and 280F, issued on October 24, 1984, served as the comment document for a notice of proposed rulemaking published in the same issue of the FEDERAL REGISTER on October 24, 1984 (49 FR 42743). That notice of rulemaking is withdrawn by a notice of withdrawal and replaced by a new notice of rulemaking published in the Proposed Rules section of this issue of the FEDERAL REGISTER. The temporary regulations under sections 274 and 280F that were published on October 24, 1984, and amended by this Treasury decision, and the new temporary regulation under section 274 added by this Treasury decision serve as the text of proposed regulations for that new notice of rulemaking.

Section 531 of the 1984 Act (98 Stat. 877) made various amendments to Code sections 61, 3121, 3231, 3306, 3401, and 3501 and added new Code sections 132 and 4977, relating to the taxation of fringe benefits. Temporary regulations in question and answer format were published in the FEDERAL REGISTER on January 7, 1985 (50 FR 747) to provide guidance on the treatment of taxable and nontaxable fringe benefits, including the valuation of taxable fringe benefits for purposes of income and employment tax withholding. Where necessary, because of the interaction between the taxation of fringe benefits and the "adequate contemporaneous record" requirement, this document also amends those temporary regulations.

The temporary regulations relating to the taxation of fringe benefits also served as the text of proposed regulations for a notice of proposed rulemaking published in the same issue of the FEDERAL REGISTER (50 FR 836). That notice of rulemaking is also withdrawn by a notice of

withdrawal and replaced by a new notice of rulemaking published in the Proposed Rules section of this issue of the FEDERAL REGISTER. The temporary regulations published on January 7, 1985, as amended by this Treasury decision, serve as the text of proposed regulations for that new notice of rulemaking.

EXPLANATION OF PROVISIONS

Adequate contemporaneous records

Section 274 (d), as amended by the 1984 Act, disallows any deduction or credit with respect to "listed property" unless substantiated by "adequate contemporaneous records." Section 1.274-5T (b) (1) of the temporary regulations provides that the "adequate contemporaneous record" requirement shall be satisfied only by keeping a log, journal, diary, or other similar record that contains certain information. That section is amended to clarify that the "adequate contemporaneous record" requirement may also be satisfied by contemporaneous records that contain the required information and that are kept in an orderly fashion (for example, trip sheets or cards, or time and expense reports).

Section 1.274-5T (b) (2) (i) specifies that a separate entry is to be made in a log, etc., for each use of "listed property", containing the date of the use, the name of the user, a measure of the use (i.e., mileage or time), and the purpose of the use. That paragraph is amended to require the name of the user except the name of the user who regularly uses the property. In addition, when the mileage is the measure of the use of "listed property", an entry may contain either the number of miles or the odometer readings at the beginning and end of each use. Also, a new paragraph (b) (2) (ii) is added to explain that only one entry is needed to record a use consisting of a round trip or a period

of uninterrupted business use. For example, use of a passenger automobile by a salesman for a business trip away from home over a period of several days may be accounted for by a single entry. De minimis personal use (such as a stop for lunch on the way between two business stops) is not an interruption in business use.

Consistent with the legislative history of the 1984 Act (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1031 (1984)), a new paragraph (b) (4) provides that if a taxpayer establishes that the failure to produce adequate contemporaneous records is due to the loss of such records through circumstances beyond the taxpayer's control, the taxpayer may substantiate a deduction or credit by reasonable reconstruction of the records.

In certain cases, a deduction or credit claimed by an employer with respect to a vehicle provided by the employer to an employee may be determined by the employee's use of the vehicle. New paragraph (c) is added to § 1.274-5T to provide that the employer may satisfy its "adequate contemporaneous record" requirement by referring to the adequate contemporaneous record maintained by the employee or by relying on a statement submitted by the employee that indicates with respect to the reporting period the required information unless the employer knows or has reason to know that the statement is not based on adequate contemporaneous records.

Records for automobiles and certain other vehicles

A taxpayer whose use of "listed property" meets certain requirements during a period may use for that period one of the methods prescribed in new § 1.274-6T to satisfy the "adequate contemporaneous record" requirement. If a taxpayer's gross income from the business of farming exceeds 70 percent of the taxpayer's gross income from all sources

(excluding passive investment income sources), one of two methods of recordkeeping is available with respect to vehicles (other than special-purpose farm vehicles that are not listed property, as discussed below) regularly used directly in connection with the business of farming. The taxpayer may keep records of the number of miles driven during the period and the number of miles a vehicle is driven for personal purposes. Alternatively, the taxpayer may determine any deduction or credit with respect to a vehicle designed primarily for commercial use as if the business use were 80 percent, and with respect to any other vehicle (e.g., an automobile) as if the business use were 70 percent.

An employer may consider certain vehicles as not used for personal purposes and need not keep logs during a period for these vehicles if for that period the vehicles are owned or leased by the employer and made available for use by one or more employees for business purposes. When not used in the employer's business the vehicles must generally be kept on the employer's business premises. The employer must also have a policy, heeded by employees, against use of the vehicles for personal purposes.

Vehicles which an employer requires employees to use for commuting may be treated similarly if the only personal use of the vehicles is for commuting, such use is not by an officer or one-percent owner of the employer, and an amount is included in employees' income to reflect the use of vehicles for commuting.

A special rule is also provided if an employee spends most of a normal business day using a vehicle to make several stops in connection with the employer's business (for example, to call on customers or clients, to make deliveries, or to visit job sites). A taxpayer may satisfy the "adequate

contemporaneous record" requirement for a period in one of two ways. Records may be kept of the number of miles driven during the period and the number of miles a vehicle is driven for personal purposes. Alternatively, a deduction or credit may be determined with respect to a vehicle designed primarily for commercial use as if total business use were 80 percent and with respect to any other vehicle as if total business use were 70 percent.

If a taxpayer chooses to keep records of the personal use of a vehicle and claims that there is no personal use, the Internal Revenue Service anticipates establishing a requirement that the taxpayer must submit a statement certifying that no personal use of the vehicle has occurred. Of course, the Internal Revenue Service would retain the right to challenge the claim of no personal use.

Vehicles available to employees for personal use.

A taxpayer may properly claim a deduction or credit only with respect to the portion of use of property that represents business use. The methods prescribed for satisfying the "adequate contemporaneous record" requirement in the case of automobiles or other vehicles used in connection with the business of farming or used by an employee during most of a normal business day in connection with the employer's trade or business assume a pattern of use that justifies treating a certain percentage of the total use of the vehicle as business use. If an employer provides the remaining portion of the use of a vehicle to an employee for personal use, the value of the availability of the vehicle for personal use constitutes a taxable fringe benefit to the employee. If so, with respect to the relevant period, to the extent that the employer includes the proper amount in the employee's income and withholds taxes if required, the

employer may also treat the remaining portion of the use of a vehicle as business use.

In some cases, an employer may determine the amount includible in an employee's income as if no amount is excludable as a working condition fringe (i.e., all use of a vehicle by an employee is for personal purposes). New § 1.274-6T (f) provides that an employer may treat all use by an employee as personal use if the employee's cash compensation for a calendar year is reasonably expected to equal or exceed the contribution and benefit base as determined under section 230 of the Social Security Act or if the employee fails to provide the required records of business use to the employer, those records are inaccurate, or the records indicate no business use.

Certain means of transportation not "listed property".

"Listed property", as defined in section 280F (d) (4) and § 1.280F-6T (b) of the temporary regulations, includes property used as a means of transportation. Paragraph (b) (2) (ii) of § 1.280F-6T provides that the term "means of transportation" does not include any vehicle or property that is of a type ordinarily not susceptible to personal use. On December 27, 1984, the Internal Revenue Service issued a news release explaining that special-purpose farm vehicles (for example, tractors and combines) are examples of vehicles ordinarily not susceptible to personal use. Section 1.280F-6T (b) (2) (ii) is amended to include these examples.

Fringe benefits

Section 61 (a) (1), as amended by the 1984 Act, provides that unless specifically excluded by some other section of the Code, gross income includes compensation for services, including fringe benefits. The temporary regulations published on January 7, 1985, provide examples of includible

and excludable fringe benefits, rules for determining in whose gross income the value of a fringe benefit is to be included, general rules for determining the fair market value of a fringe benefit, and optional special rules for valuing certain fringe benefits. The temporary regulations under section 61 are amended to clarify that the availability of certain vehicles other than automobiles is also a fringe benefit that is includible in an employee's gross income if provided by an employer for use by the employee.

The temporary regulations under section 61 contain a special rule for valuation of the availability of an employer-provided automobile. If an employer provides an employee with an automobile which is available to the employee for an entire calendar year, the "Annual Lease Value" is the value of the benefit provided. The temporary regulations are amended to clarify that this special rule applies to valuing the availability of employer-provided automobiles and not the availability of other vehicles provided by an employer.

The temporary regulations under section 61 contain a second special rule valuing the use of an employer-provided automobile to an employee for commuting at $4.00 per day for each day the automobile is used for commuting. The temporary regulations are amended to clarify that the special rule for valuing commuting use is applicable to vehicles other than automobiles. The value of that commuting use is changed to $3.00 per day and the regulations are clarified to specify that that amount includes the value of any goods or services provided by the employer in connection with the use of the road vehicle.

The special rule for valuing commuting use is amended by removing the requirement that a substantial amount of the use of the vehicle be by employees other than the employee

required to use the vehicle for commuting. The requirement that the employee not be an officer or five-percent owner of the employer is amended effective [30 DAYS AFTER PUBLICATION OF THIS TREASURY DECISION], to require that, for purposes of the special valuation rule, the employee who uses an employer-provided vehicle for commuting cannot be an officer or one-percent owner of the employer. The temporary regulations are further amended to clarify that de minimis personal use by an employee (for example, a stop for lunch on the way between two business stops or a stop for a personal errand on the way between a business stop and the employee's home) is permissible.

Section 132, as added to the Code by the 1984 Act, provides that certain fringe benefits are excludable from gross income if they qualify as no-additional cost services, qualified employee discounts, working condition fringes, or de minimis fringes. The temporary regulations under section 132 provide examples describing the application of the working condition fringe exclusion to the availability of employer-provided automobiles. The applicability of those regulations is extended to other types of vehicles made available by an employer for use by an employee. A new question and answer is also added to the temporary regulations under section 132 to explain the application of the "adequate contemporaneous record" requirement to a determination of the amount, if any, of an employee's working condition fringe with respect to an employer-provided vehicle.

The 1984 Act also amended sections 3121, 3231, 3306, 3401, and 3501 to provide generally that fringe benefits that are not otherwise specifically excluded from gross income are includible in wages and compensation for purposes of income and employment tax withholding. The

temporary regulations require an employer to take into account any use of an employer-provided automobile in the employer's business before determining the value of the availability of that automobile that is includible in the employee's gross income. The temporary regulations are amended to apply to other employer-provided vehicles, in addition to automobiles. In addition, for an employer's taxable years beginning after December 31, 1984, the employer must determine the amount to be included in the employee's gross income based on records that satisfy the employer's "adequate contemporaneous record" requirement. However, the temporary regulations are also amended to conform to new § 1.274-6T (f) and provide that in certain circumstances an employer may include in an employee's income an amount relating to an employer-provided vehicle calculated without regard to any working condition fringe exclusion.

SPECIAL ANALYSES

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

A notice of proposed rulemaking is not required by 5 U.S.C. 553 (d) for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control numbers 1545-0074 and 1545-0907.

DRAFTING INFORMATION

The principal authors of these temporary regulations are Michel A. Dazé and Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

LIST OF SUBJECTS IN
26 CFR §§ 1.61-1 - 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

LIST OF SUBJECTS IN
26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad Retirement, Social Security, Unemployment taxes, Withholding.

Adoption of amendments to the regulations:

Accordingly, 26 CFR Parts 1 and 31 are amended as follows:

PART 1--INCOME TAX REGULATIONS

Paragraph 1. Section 1.61-2T is amended as follows:

1. A-1 is amended by adding the words "or other road vehicle" after the words "employer-provided automobile".

2. A-9 is amended by removing the words "use of employer-provided automobiles for commuting" and by adding the words "use of employer-provided road vehicles for commuting" in their place.

3. Q/A-11 is revised to read as set forth below.

4. A-12 is revised to read as set forth below.

5. Q/A-20 is revised to read as set forth below.

6. Q/A-21 is amended by removing the word "automobile" and by adding the words "road vehicle" in its place wherever it appears. Q/A-21 is further amended by removing the words "$4.00 per day" and by adding the words "$3.00 per

day (which includes the value of any goods or services provided by the employer in connection with the use of the road vehicle)" in their place.

7. Revised Q/A-11, A-12, and Q/A-20 read as follows:

§ 1.61-2T Questions and answers relating to the taxation of fringe benefits.

* * * * *

Q-11: For purposes of this section, what do the terms "automobile" and "road vehicle" mean?

A-11: The term "automobile" means any motorized four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "road vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. Q/A-12 through Q/A-19 of this section apply only to an "automobile" as defined in this Q/A-11.

Q-12: * * *

A-12: If an employer provides an employee with an automobile which is available to the employee for an entire calendar year, the Annual Lease Value (as defined in Q/A-13 of this section) is the value of the benefit provided. An automobile available to or used by an individual, but taxable to an employee (see Q/A-3 of this section), is referred to in Q/A-11 through Q/A-19 of this section as available to the employee and use by the individual is considered use by the employee. For a discussion of the working condition fringe exclusion relating to the business use of an employer-provided automobile or other road vehicle, see section 132 (a) (3) and § 1.132-1T.

When the special rule is not or cannot be used, the value of the availability of an employer-provided automobile or other road vehicle is determined under the general valuation principles set forth in this section. In general, such valuation must be determined by reference to the cost to the employee of renting or leasing a comparable automobile or other road vehicle on comparable terms for a comparable period. The value of the availability of an employer-provided automobile or other road vehicle cannot be determined by reference to a cents-per-mile rate applied to the number of miles the automobile or other road vehicle is driven.

* * * * *

Use of employer-provided road vehicle for commuting.

Q-20: Is there a special rule that taxpayers may use to value employer-provided road vehicles which are not available for personal use other than commuting use?

A-20: Yes. A special rule may be used to compute commuting value if the following criteria are met with respect to an employer-provided road vehicle:

(a) For bona fide noncompensatory business reasons, the employer requires the employee to commute in the road vehicle,

(b) The employer's policy is that the employee, or any individual whose use would be taxable to the employee, is not allowed to use the road vehicle for personal purposes other than commuting and de minimis personal use (such as a stop for lunch on the way between two business stops or a stop for a personal errand on the way between a business stop and the employee's home),

(c) Except for de minimis use, the employee, or any individual whose use would be taxable to the

employee, does not use the road vehicle for any personal purpose other than commuting,

(d) The road vehicle is used in the employer's business, and

(e) For the period beginning January 1, 1985, and ending [30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER], the employee required to use the road vehicle for commuting is not an officer or a five-percent owner of the employer. For any subsequent period, the employee required to use the road vehicle for commuting is not an officer or a one-percent owner of the employer.

For purposes of determining who is a one-percent (or five-percent) owner, any individual who owns (or is considered as owning) more than one percent (or five-percent) of the fair market value of an entity (the "owned entity") is considered a one-percent (or five-percent) owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m).

If an employee is not permitted to use the special rule for valuing the use of an employer-provided road vehicle for commuting (e.g., because of the requirement in paragraph (e) of this Q/A-20), the special rule for valuing the availability of an employer-provided automobile may be used, if applicable, with respect to the employee (see Q/A-12 through Q/A-19 of this section). If that special rule is not or cannot be used, the general valuation rules must be used (see Q/A-5 through Q/A-7 of this section).

* * * * *

Par. 2. Section 1.132-1T is amended as follows:

1. Q/A-4 is amended by removing the words "employer-provided automobile", "the automobile", and "an automobile" each place that they appear and by adding the words "employer-provided road vehicle", "the road vehicle", and "a road vehicle", respectively, in their place. Q/A-4 is further amended by adding a new sentence after the first sentence of A-4 that reads as follows: "(For purposes of this section, the term 'road vehicle' has the meaning given the term in Q/A-11 of § 1.61-2T).".

2. A new Q/A-4a is added immediately after Q/A-4 and reads as set forth below.

3. Q/A-6 is amended by removing the words "employer-provided automobiles" and by adding the words "employer-provided road vehicles" in their place. Q/A-6 is further amended by removing the words "an automobile by automobile basis" and by adding the words "a road vehicle by road vehicle basis" in their place.

4. Q/A-7 is amended by removing the words "specially designed automobiles", "specially designed automobile", "an automobile", and "the automobile" each place that they appear and by adding the words "specially designed road vehicles", "specially designed road vehicle", "a road vehicle", and "the road vehicle", respectively, in their place.

5. Q/A-8 is amended by removing the word "automobile" each place that it appears and by adding the words "road vehicle" in its place.

6. New Q/A-4a reads as follows:

§ 1.132-1T Questions and answers relating to the exclusion from gross income of certain fringe benefits.

* * * * *

Working Condition Fringe.

* * * * *

Q-4a: Do section 274 (d) (4) and the regulations thereunder apply in determining the amount, if any, of an employee's working condition fringe with respect to an employer-provided road vehicle?

A-4a: Yes, as provided below:

(a) Substantiation required. In the case of an employer-provided road vehicle that is listed property within the meaning of section 280F (d) (4) and § 1.280F-6T (b), no amount of the value of the availability of the road vehicle to the employee may be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of section 274 (d) (4) and the regulations thereunder are satisfied. However, the substantiation requirement of section 274 (d) (4) and the regulations thereunder do not apply to the determination of an employee's working condition fringe exclusion prior to the date that that requirement applies to the employer under the effective date provision of section 274 (d) (4).

(b) "Adequate contemporaneous record" requirement. Section 1.274-5T provides that the substantiation requirements of section 274 (d) (4) are satisfied by "adequate contemporaneous records" detailing the employee's use of the employer-provided road vehicle. Therefore, such records maintained by the employee and relied on by the employer to the extent permitted by § 1.274-5T (c), will be sufficient to substantiate a working condition fringe exclusion. The amount of any working condition fringe is determined in the manner described in Q/A-4 of this section.

(c) Methods of satisfying the "adequate contemporaneous record" requirement. Section 1.274-6T provides that the "adequate contemporaneous record" requirement of § 1.274-5T may be satisfied, in certain circumstances, by using one of the methods prescribed in § 1.274-6T (b) through (e). If the employer uses one of the methods prescribed in § 1.274-6T during a period with respect to an employer-provided road vehicle, that method must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period pursuant to the rules prescribed in paragraphs (d) through (g) of this Q/A-4a, whichever is applicable. An employer who is exempt from Federal income tax may still use one of the methods prescribed in § 1.274-6T (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to the vehicle during the period. If the employer uses one of the methods prescribed in § 1.274-6T (b) through (e) during a period with respect to an employer-provided road vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee by the employer pursuant to this Q/A-4a. If, however, the employer uses the method prescribed in § 1.274-6T (c) or (d) and the employee without the employer's knowledge uses the road vehicle for purposes other than de minimis personal use (in the case of the method prescribed in § 1.274-6T (c)), or for purposes other than de minimis personal use and commuting (in the case of the method prescribed in § 1.274-6T (d)), then the employee has additional gross income.

The rules prescribed in paragraphs (d) through (g) of this Q/A-4a assume that the method prescribed in § 1.274-6T is used for a one-year period. Accordingly, references to the value of the availability of a road vehicle, amounts excluded as a working condition fringe, miles driven, etc., are based on a one-year period. If the method prescribed in § 1.274-6T is used for a period of less than a year, the amounts referenced in the previous sentence must be adjusted accordingly.

(d) Road vehicles used in connection with the business of farming that are available to employees for personal use. For a road vehicle described in § 1.274-6T (b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated as follows:

(1) Formula allocation. If the method prescribed in § 1.274-6T (b) (3) is used by the employer, the working condition fringe exclusion is calculated by multiplying the value of the availability of the road vehicle by the appropriate formula percentage (either 80 percent or 70 percent, depending upon the type of road vehicle).

If the road vehicle is available to more than one individual, the employer must allocate the gross income attributable to the road vehicle (either 20 percent or 30 percent (depending upon the type of road vehicle) of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the road vehicle by the individuals. See § 1.274-6T (b) (1) (i) (D). Amounts that would be

allocated to individuals who are not employees (such as a sole proprietor) reduce the amount that may be allocated to employees but are otherwise to be disregarded for purposes of this Q/A-4a. See § 1.274-6T (b) (3) for the effect of the personal use of a road vehicle by a sole proprietor on the deductions or credits available with respect to the vehicle.

For purposes of this paragraph (d) (1), the value of the availability of a road vehicle may be calculated as if the vehicle had been available to only one employee continuously and without regard to any working condition fringe exclusion.

The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided road vehicle between two employees:

Example (1). Assume that two farm employees share the use of a road vehicle which for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274-6T (b) (3). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle for personal use (20 percent or 30 percent of the value of the availability of the vehicle, depending upon the type of vehicle) to employee B.

Example (2). Assume that for a calendar year, farm employees C and D share the use of a road vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274-6T (b) (3). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability to use the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (20 percent or 30 percent of the value of the availability of the vehicle, depending upon the type of vehicle) equally between the two employees.

Example (3). Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(2) Actual use allocation. If the method prescribed in § 1.274-6T (b) (4) is used by the employer, the working condition fringe exclusion is calculated by multiplying the value of the availability of the road vehicle by a fraction, the numerator of which is the difference between the total miles driven by the employee and the personal miles driven by the employee, and the denominator of which is the total miles driven by the employee.

If the road vehicle is available to more than one individual, the employer must allocate the gross income attributable to the availability of the road vehicle to each employee by multiplying the value of the availability of the road vehicle by a fraction, the numerator of which is the personal miles driven by the employee, and the denominator of which is the total miles driven by all individuals.

For purposes of this paragraph (d) (2), the value of the availability of a road vehicle may be determined as if the vehicle had been available to only one employee continuously and without regard to any working condition fringe exclusion. For purposes of this Q/A-4a, personal miles include miles driven by the employee in a business that is unrelated to the business of the employer.

(e) Road vehicles not available to employees for personal use. For a road vehicle described in § 1.274-6T (c) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the road vehicle if the employer uses the method prescribed in § 1.274-6T (c).

(f) Road vehicles not available to employees for personal use other than commuting. For a road vehicle described in § 1.274-6T (d) (relating to certain vehicles not used for personal purposes other than commuting), the working

condition fringe exclusion is equal to the value of the availability of the road vehicle for purposes other than commuting if the employer uses the method prescribed in § 1.274-6T (d). This rule applies only if the special rule for valuing commuting use, as prescribed in Q/A-20 and Q/A-21 of § 1.61-2T, is used and the amount determined under the special rule is included in the employee's income.

(g) Road vehicles used to visit multiple business locations that are available to employees for personal purposes. For a road vehicle described in § 1.274-6T (e) (relating to certain vehicles used by employees to visit multiple business locations), the working condition fringe exclusion is calculated as follows:

(1) Formula allocation. If the method prescribed in § 1.274-6T (e) (3) is used by the employer, the working condition fringe exclusion is calculated by multiplying the value of the availability of the road vehicle by the appropriate formula percentage (either 80 percent or 70 percent depending upon the type of road vehicle).

If the road vehicle is available to more than one individual, the employer must allocate the gross income attributable to the road vehicle (either 20 percent or 30 percent (depending upon the type of road vehicle) of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the road vehicle by the individuals. See § 1.274-6T (e) (2) (iv). Amounts that would be allocated to individuals who are not employees (such as a sole proprietor) reduce the amount that may be allocated to employees but are otherwise to be disregarded for purposes of this Q/A-4a. See § 1.274-6T (e) (3) for the effect of the personal use of a road vehicle by a sole proprietor on the deductions or credits available with respect to the vehicle.

For purposes of this paragraph (g) (1), the value of the availability of a road vehicle may be calculated as if the vehicle had been available to only one employee continuously and without regard to any working condition fringe exclusion.

The following example illustrates a reasonable allocation of the gross income with respect to a vehicle among several employees:

Example. Assume that for a calendar year four employees share the use of a vehicle that during most of a normal business day is used by the employees in connection with the employer's business and qualifies for use of the rule in § 1.274-6T (e) (3). Assume further that the employees alternate the use of the vehicle in the employer's business each month and that during each month the vehicle is available for personal use only by the employee using the vehicle for business that month. The employer should allocate the income attributable to the availability of the vehicle for personal use (20 percent or 30 percent of the value of the availibility of the vehicle, depending upon the type of vehicle) equally among the employees.

(2) Actual use allocation. If the method prescribed in § 1.274-6T (e) (4) is used by the employer, the working condition fringe exclusion is calculated by multiplying the value of the availability of the road vehicle by a fraction, the numerator of which is the difference between the total miles driven by the employee and the personal miles driven by the employee, and the denominator of which is the total miles driven by the employee.

If the road vehicle is available to more than one individual, the employer must allocate the gross income attributable to the availability of the road vehicle to each employee by multiplying the value of the availability of the road vehicle by a fraction, the numerator of which is the personal miles driven by the employee, and the denominator of which is the total miles driven by all individuals.

For purposes of this paragraph (g) (2), the value of the availability of a road vehicle may be determined as if the vehicle had been available to only one employee continuously

and without regard to any working condition fringe exclusion. For purposes of this Q/A-4a, personal miles include miles driven by the employee in a business that is unrelated to the business of the employer.

* * * * *

Par. 3. Section 1.274-5T is amended as follows:

1. Paragraph (a) is amended by adding the sentence "See § 1.274-6T for the rules regarding the substantiation requirement with respect to certain types of 'listed property'." after the last sentence of that paragraph.

2. Paragraph (b) (1) is amended by adding two new sentences after the first sentence to read as follows: "The 'adequate contemporaneous record' requirement may also be satisfied by contemporaneous records that contain the information required by paragraph (b) (2) of this section and that are kept in an orderly fashion (for example, trip sheets or cards, or time and expense reports). See paragraph (b) (4) of this section in the case of records lost due to circumstances beyond the control of the taxpayer.".

3. Paragraph (b) (2) (i) is amended by removing the words "paragraph (b) (2) (ii)" from the first sentence and adding in their place the words "paragraph (b) (2) (iii) or (c)". Paragraph (b) (2) (i) is further amended by removing the second sentence.

4. Paragraph (b) (2) (i) (B) is amended by adding after the word "property" and before the comma the words "except for the name of the one person who regularly uses the property".

5. Paragraph (b) (2) (i) (C) is amended by removing the words "The number of miles," and by adding in their place the words "Either the number of miles or the odometer readings at the beginning and ending of each use,".

6. Paragraph (b) (2) (ii) is redesignated as paragraph (b) (2) (iii) and a new paragraph (b) (2) (ii) is added in its place and reads as set forth below.

7. Paragraph (b) (2) (iii) as so redesignated is amended by removing the words "paragraph (b) (2) (i)" and by adding "paragraph (b) (2) (i) and (ii)" in their place.

8. New paragraphs (b) (4), (c), and (d) are added after paragraph (b) (3) and read as set forth below.

9. New paragraphs (b) (2) (ii), (b) (4), (c), and (d) read as follows:

§ 1.274-5T Substantiation with respect to listed property for taxable years beginning after 1984.

* * * * *

(b) * * *

(2) * * *

(ii) Entries with respect to round trips. Uses which may be considered part of a single use, for example, a round trip or uninterrupted business use, may be accounted for by a single entry. For example, use of a truck to make deliveries at several different locations which begins and ends at the business premises and which may include a stop at the business premises in between two deliveries may be accounted for by a single entry. In addition, use of a passenger automobile by a salesman for a business trip away from home over a period of time (for example, several days) may be accounted for by a single entry. De minimis personal use (such as a stop for lunch on the way between two business stops) is not an interruption in business use.

(iii) * * *

(3) * * *

(4) Loss of records due to circumstances beyond control of taxpayer. If the taxpayer establishes that the failure to produce adequate contemporaneous records is due to the loss of such records through circumstances beyond the taxpayer's control, such as destruction by fire, flood, earthquake, or other casualty, the taxpayer shall have a right to substantiate a deduction or credit by reasonable reconstruction of the taxpayer's records.

(c) Employer-provided vehicles. In the case of vehicles that an employer provides to an employee, the employer may satisfy the requirement of section 274 (d) (4), this section, and § 1.274-6T by relying on "adequate contemporaneous records" maintained by the employee unless the employer knows or has reason to know they are not accurate. The employer must retain a copy of the "adequate contemporaneous records" maintained by the employee. Alternatively, to satisfy its obligation under section 274 (d) (4), the employer may rely on a statement submitted by the employee indicating over the reporting period the number of miles driven by the employee in the employer's business and the number of total miles driven by the employee (or, in the case of the methods prescribed in § 1.274-6T (b) (4) and (e) (4), the number of personal miles driven by the employee and the number of total miles driven by all individuals), unless the employer knows or has reason to know the statement is not based on "adequate contemporaneous records". If the employer relies on an employee's statements, the employer is required to retain only copies of those statements. In any case, a copy of the "adequate contemporaneous records" must be retained by the employee.

(d) Attribution. For purposes of this section and § 1.274-6T, a person's use of any vehicle for which the use would be taxed to a second person, assuming the vehicle were provided by a third person employing the second person, is considered use by the second person. For example, use of an employer-provided road vehicle by the employee's spouse is considered use by the employee.

Par. 4. A new § 1.274-6T is added immediately after § 1.274-5T and before § 1.274-6. New § 1.274-6T reads as follows:

§ 1.274-6T Substantiation with respect to certain means of transportation for taxable years beginning after 1984.

(a) In general. For taxable years beginning after December 31, 1984, section 274 (d) (4) and § 1.274-5T (a) deny a taxpayer a deduction or credit with respect to certain listed property (as defined in section 280F (d) (4) and § 1.280F-6T (b)) unless the use of such property is substantiated by "adequate contemporaneous records". For taxable years beginning after December 31, 1984, a taxpayer may satisfy the recordkeeping requirement of section 274 (d) (4) and § 1.274-5T (a) in certain circumstances by using one of the methods prescribed in paragraph (b), (c), (d), (e), or (f) of this section.

(b) Vehicles used in connection with the business of farming--(1) In general. (i) A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T (a) for a period of time in the manner prescribed in

paragraph (b) (3) or (4) of this section with respect to the use of a "road vehicle" (as defined in paragraph (g) (1) of this section) if for that period--

(A) The vehicle is regularly "used directly in connection with the business of farming" (as defined in paragraph (b) (2) of this section),

(B) The requirements of paragraph (b) (1) (ii) and (iii) of this section are satisfied,

(C) In the case of a "road vehicle" described in paragraph (g) (1) (ii) of this section (e.g., an automobile), the vehicle is used during most of a normal business day to make several stops directly in connection with the business of farming, and

(D) In the case of a road vehicle made available to more than one employee, the requirement of Q/A-4a of § 1.132-1T (relating to the method of allocating the working condition fringe exclusion among the employees) is satisfied.

(ii) This paragraph (b) applies only to a taxpayer whose gross income from the business of farming exceeds 70 percent of the taxpayer's gross income from all sources (excluding passive investment income sources) during the taxable year. For purposes of this paragraph (b) (1) (ii), the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of capital assets.

(iii) A taxpayer must be able to demonstrate that the taxpayer has met the requirements of this paragraph (b) by evidence that enables the Commissioner to make that determination. For example, the taxpayer would be required to show that the taxpayer's gross income from farming exceeds 70 percent of the taxpayer's

gross income from all sources (excluding passive investment income sources).

(2) "Used directly in connection with the business of farming". The phrase "used directly in connection with the business of farming" means that the vehicle must be used directly in connection with the business of operating a farm (i.e., cultivating land or raising or harvesting any agricultural or horticultural commodity, or the raising, shearing, feeding, caring for, training, and management of animals) or incidental thereto (for example, trips to a feed and supply store).

(3) Special rule. A taxpayer may determine any deduction or credit as if both the taxpayer's "business/investment use" (as defined in § 1.280F-6T (d) (3) (i)) and "qualified business use" (as defined in § 1.280F-6T (d) (2)) of the vehicle for the period are--

(i) 80 percent with respect to a "road vehicle" described in paragraph (g) (1) (i) of this section, and

(ii) 70 percent with respect to a "road vehicle" described in paragraph (g) (1) (ii) of this section,

plus that percentage, if any, attributable to an amount included in an employee's gross income.

(4) Flexibility. In lieu of meeting the requirements of paragraph (b) (3) of this section, the "adequate contemporaneous record" requirement may be satisfied for the period by keeping at the time prescribed in § 1.274-5T (b) (3) a log, journal, diary, or other similar record (as described in § 1.274-5T (b) (1)) that contains the following:

(i) Except for a vehicle described in paragraph (b) (4) (ii) of this section, entries of the

odometer readings at the beginning and ending of each period (not to exceed a taxable year), and if a period includes the last day of a calendar quarter and the first day of the next calendar quarter, an entry of the odometer reading at the ending of a calendar quarter, or,

(ii) In the case of a vehicle used exclusively by a sole proprietor or independent contractor, entries of the odometer readings at the beginning and ending of the taxable year, and

(iii) With respect to a personal use (including use by an employee in a business unrelated to the employer's business) of the vehicle--

(A) Either the number of miles or entries of the odometer readings at the beginning and ending of the personal use of the vehicle,

(B) The name of the user of the vehicle except for the name of the one person, if any, who regularly uses the vehicle, and

(C) The date of the personal use of the vehicle.

(c) Vehicles not used for personal purposes--

(1) In general. A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T (a) in the manner prescribed in paragraph (c) (3) of this section with respect to the use of a "road vehicle" (as defined in paragraph (g) (1) of this section) during a period of time if for that period the requirements of paragraph (c) (2) of this section are satisfied.

(2) Requirements. The requirements of this paragraph (c) (2) are:

(i) The vehicle is owned or leased by an employer and made available for use by one or more employees in connection with the employer's trade or business,

(ii) When the vehicle is not used in the employer's trade or business, it is kept on the employer's business premises, unless it is temporarily located elsewhere, for example, for maintenance or because of a mechanical failure,

(iii) The employer's business premises and the residence of any employee using the vehicle are at different locations,

(iv) The employer's policy is that no employee is allowed to use the vehicle for personal purposes other than de minimis personal use (such as a stop for lunch on the way between two business stops), and

(v) The employer reasonably believes that, except for de minimis use, no employee uses the vehicle for any personal purpose.

(3) Required records. A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T in the case of a vehicle to which paragraph (c) (2) of this section applies by evidence that enables the Commissioner to determine if the taxpayer meets the requirements of paragraph (c) (2) of this section.

(d) Vehicles not used for personal purposes other than commuting--(1) In general. A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T (a) in the manner prescribed in paragraph (d) (3) of this section with respect to the use of a "road vehicle" (as defined in paragraph (g) (1) of this section) during a period of time if for that period the requirements of paragraph (d) (2) of this section are satisfied.

(2) Requirements. The requirements of this paragraph (d) (2) are:

(i) The vehicle is owned or leased by an employer and made available for use by one or more employees in connection with the employer's trade or business,

(ii) For bona fide noncompensatory business reasons, the employer requires an employee to commute in the vehicle,

(iii) The employer's policy is that the employee is not allowed to use the vehicle for personal purposes other than commuting and de minimis personal use (such as a stop for lunch on the way between two business stops or a stop for a personal errand on the way between a business stop and the employee's home),

(iv) The employer reasonably believes that, except for de minimis use, the employee does not use the vehicle for any personal purpose other than commuting,

(v) The vehicle is used in the employer's business,

(vi) The employee required to use the road vehicle for commuting is not an officer or a one-percent owner of the employer, and

(vii) The employer accounts for the commuting use by including an amount in the employee's income in the manner prescribed in Q/A-21 of § 1.61-2T.

For purposes of determining who is a one-percent owner, any individual who owns (or is considered as owning) more than one percent of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m).

(3) Required records. A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T in the case of a "road vehicle" to which this paragraph (d) applies by evidence that enables the Commissioner to determine if the taxpayer meets the requirements of paragraph (d) (2) of this section.

(e) Vehicles used by employees to visit multiple business locations--(1) In general. A taxpayer may satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T (a) in the manner prescribed in paragraph (e) (3) or (4) of this section with respect to the use of a "road vehicle" (as defined in paragraph (g) (1) of this section) during a period of time if for that period the requirements of paragraph (e) (2) of this section are met. This paragraph (e) does not apply with respect to an employee who customarily spends most of a normal business day in an office or similar setting.

(2) Requirements. The requirements of this paragraph (e) (2) are:

(i) The vehicle is either--

(A) Owned or leased by an employer and made available for use by one or more employees, or

(B) Owned or leased by an employee,

(ii) All the business use of the vehicle is in connection with the principal trade or business of the employee,

(iii) During most of a normal business day the vehicle is used by an employee to make several stops in connection with the employer's business (for example, to call on customers or clients, to make deliveries, or to visit job sites), and

(iv) In the case of a road vehicle made available to more than one employee, the requirement of Q/A-4a of § 1.132-1T (relating to the method of allocating the working condition fringe exclusion among the employees) is satisfied.

A taxpayer must be able to demonstrate that the taxpayer has met the requirements of this paragraph (e) (2) by evidence that enables the Commissioner to make that determination.

(3) Special rule. A taxpayer may determine any deduction or credit with respect to a vehicle to which this paragraph (e) applies in the manner prescribed in paragraph (b) (3) of this section.

(4) Flexibility. In lieu of using the method prescribed in paragraph (e) (3) of this section, the "adequate contemporaneous record" requirement may be satisfied for the period in the manner prescribed in paragraph (b) (4) of this section.

(5) Cross-references. See § 1.61-2T Q/A-11 through Q/A-22, for special rules valuing the availability of employer-provided road vehicles and § 1.132-1T Q/A-3 through Q/A-8, relating to an exclusion from gross income for a working condition fringe benefit.

(f) Vehicles treated as used entirely for personal purposes--(1) In general. An employer may satisfy the "adequate contemporaneous record" requirement with respect to the use of a "road vehicle" (as defined in paragraph (g) (1) of this section) used during a period of time by an employee--

(i) Whose cash compensation during the calendar year in which the vehicle is available is reasonably

expected to equal or exceed the contribution and benefit base (as determined under section 230 of the Social Security Act),

(ii) Who fails within a reasonable period after a request from the employer to provide the employer with records or a statement (with respect to business and total mileage), needed by the employer to satisfy its "adequate contemporaneous record" requirement,

(iii) Who provides records or a statement (with respect to business and total mileage) that the employer knows or has reason to know is not accurate, or

(iv) Who provides records or a statement indicating no business use,

by including the value of the availability of the vehicle during the relevant period in the employee's income without any exclusion for a working condition fringe with respect to such vehicle. See paragraph (f) (2) of this section for the limitation on the provisions of this paragraph (f) (1).

(2) Limitation. If an employee does not meet any of the requirements of paragraph (f) (1) of this section but the employer nevertheless includes the value of the availability of an employer-provided vehicle in the income of that employee without any exclusion for a working condition fringe with respect to such vehicle, the employer fails to satisfy the "adequate contemporaneous record" requirement of section 274 (d) (4) and § 1.274-5T. For example, if an employer makes a vehicle available to an employee with the understanding that the employee will not submit records or a statement to the employer, and the employer

includes the entire value of the availability of the vehicle in the employee's income, the employer has not substantiated its right to any deduction or credit with respect to the vehicle for the period.

(g) Definitions. For purposes of this section--

(1) "Road vehicle". The term "road vehicle" means any vehicle manufactured primarily for use on public streets, roads, and highways that is "listed property" (as defined in section 280F (d) (4) and § 1.280F-6T (b)) and is--

(i) Designed primarily for commercial use other than a "passenger automobile" (as defined in section 280F (d) (5) and § 1.280F-6T (c)), or

(ii) A vehicle not described in paragraph (g) (1) (i) of this section, e.g., a truck or van specially equipped or modified for personal purposes.

Solely for purposes of this section, a "passenger automobile" does not include a truck or van.

(2) Employer and employee. The terms "employer" and "employee" include the following:

(i) A sole proprietor shall be treated as both an employer and employee,

(ii) A partnership shall be treated as an employer of its partners, and

(iii) A partner shall be treated as an employee of the partnership.

(h) Limitation. If a taxpayer chooses to satisfy the recordkeeping requirement of section 274 (d) (4) and § 1.274-5T (a) by using one of the methods prescribed in paragraph (b), (c), (d), or (e) of this section or in the manner prescribed in § 1.274-5T, and files a return with the Internal Revenue Service for a

taxable year consistent with such choice, then the taxpayer may not later amend the return to use another method prescribed in paragraph (b), (c), (d), or (e) of this section. This rule shall apply to employees for purposes of their working condition fringe exclusion (see § 1.132-1T) as well as to employers. For example, if an employee excludes on his federal income tax return for a taxable year 90 percent of the value of the availability of an employer-provided automobile on the basis of records that allegedly satisfy the "adequate contemporaneous record" requirement of § 1.274-5T (determined without regard to this section), and that requirement is not satisfied, then the employee may not satisfy the "adequate contemporaneous record" requirement for the taxable year by any method prescribed in this section.

Par. 5. Section 1.280F-6T (b) (2) (ii) is revised to read as set forth below:

§ 1.280F-6T Special rules and definitions.

* * * * *

(b) * * *

(2) * * *

(ii) Exception. The term "means of transportation" does not include any vehicle or property that is of a type ordinarily not susceptible to personal use. Examples of such property are forklifts, cement mixers, dump trucks, trucks specially designed for specific business purposes (e.g., refrigerated delivery trucks), and special-purpose farm vehicles (e.g., tractors and combines). This paragraph (b) (2) (ii) does not apply

with respect to any vehicle used by an individual for commuting purposes.

* * * * *

PART 31--EMPLOYMENT TAX REGULATIONS

Par. 6. Section 31.3501 (a)-1T is amended as follows:

1. Q/A-7 is amended by removing from Q-7 the word "automobile" and by adding the words "automobile or other road vehicle" in its place. Q/A-7 is further amended by removing the first sentence of A-7 and by adding the following two new sentences in its place: "The value of the availability of an employer-provided automobile or other road vehicle must be determined under the rules provided in § 1.61-2T and § 1.132-1T. (For purposes of this section, the terms 'automobile' and 'road vehicle' have the meaning given those terms in Q/A-11 of § 1.61-2T).".

2. Q/A-8 is revised to read as set forth below.

3. A new Q/A-8a is added immediately before Q/A-9 and reads as set forth below.

4. Revised Q/A-8 and new Q/A-8a read as follows:

§ 31.3501 (a)-1T Question and answer relating to the time employers must collect and pay the taxes on noncash fringe benefits.

* * * * *

Q-8. May an employer treat any part of the Annual Lease Value or Daily Lease Value (as defined in § 1.61-2T), or the fair market value if the special rule of § 1.61-2T is not or cannot be used, of an automobile or other road vehicle made available to an employee as includible in the employee's gross income without regard to whether the employee has used the automobile or other road vehicle in the employer's business?

A-8: No, except as otherwise provided in this Q/A-8, an employer may not include any amount in an employee's income with respect to an employer-provided automobile or other road vehicle unless such inclusion is based on:

(a) Records or a statement submitted by an employee that contain the business and total mileage for the period beginning on January 1, 1985, and ending on the last day of the employer's taxable year that began in 1984, or

(b) Records that satisfy the employer's "adequate contemporaneous record" requirement under section 274 (d) (4) and the regulations thereunder for the employer's taxable years beginning after December 31, 1984.

For example, an employer who is subject to (b) of this Q/A-8 may rely on a statement submitted by the employee indicating for the period the number of miles driven by the employee in the employer's business and the total number of miles driven by the employee unless the employer knows or has reason to know the statement submitted is not based on "adequate contemporaneous records". (For purposes of this section, if a road vehicle is available to any person and such availability would be taxable to an employee, miles driven by that person will be considered miles driven by the employee).

Notwithstanding the preceding paragraph of this Q/A-8, an employer may include in an employee's income the value of the availability of an employer-provided road vehicle, calculated without regard to a working condition fringe exclusion based on business mileage if one of the conditions listed in § 1.274-6T (f) (1) is satisfied with respect to the relevant period.

In addition, the employer must, before including any amount in an employee's income with respect to an employer-provided road vehicle, take into account other working condition fringe exclusions, such as the security exclusion discussed in § 1.132-1T. If proper calculation of an exclusion requires information from the employee and the employee does not respond within a reasonable period of time to a request for that information or produces information which the employer knows or has reason to know is not accurate, the employer may disregard such exclusion in reporting the employee's gross income.

Q-8a. May an employer withhold amounts attributable to noncash fringe benefits on the basis of average wages as permitted under section 3402 (h) (1)?

A-8a. In general, yes. In estimating wages under section 3402 (h) (1) (A), however, the employer must take into account estimated business use of the benefit (such as an employer-provided road vehicle). In no event, however, may the amount reported by the employer as "wages" for any employee for any quarter be based on an estimation. However, the rules in Q/A-1 of this section regarding permissible delays in actual withholding apply.

* * * * *

There is need for immediate guidance with respect to the subject matter of this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public hearing procedures under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Approved by the Office of Management and Budget under control numbers 1545-0074 and 1545-0907.

(signed) Roscoe L. Egger, Jr.

Commissioner of Internal Revenue

Approved:

(signed) Ronald A. Pearlman

Assistant Secretary of Treasury FEB 13 1985

CONCLUSION OF HEARING

Senator ABDNOR. I also want to add that the committee will make a transcript of this hearing available to the Finance Committee, and the other people I mentioned. So we thank you all for your attendance and your contribution to what I think is a very important matter on the subject, and we thank you for your attendance.

The hearing is concluded and the subcommittee is recessed.

[Whereupon, at 4:35 p.m., Wednesday, March 6, the hearing was concluded, and the subcommittee was recessed, subject to the call of the Chair.]

○